OPINIONS OF THE OF THE CENTRAL INTELLIGENCE AGENCY

VOLUME XVI 1963

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OGC 62-2577(a)

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MEMORANDUM FOR: Chief, FE Division

SUBJECT:

Reimbursement of Parking Fees -Detailed Military Personnel

1. A recent decision of the Comptroller General, 41 Comp. Gen. 475 (1962), has held that members of the uniformed services may not be reimbursed for the actual costs of parking fees incurred in connection with the use of a privately owned vehicle in transacting official business in and around their regular duty station. FE Division has queried this Office regarding the effect of this opinion on military personnel serving with the Agency.

25X1A

25X1A

2. We do not feel that this decision precludes implementation of hich sets forth Agency policy regarding military details. states that "...detailed military personnel may be authorized, at the discretion of this Agency, travel, transportation, and other allowance entitlements of civilian personnel..." Accordingly this Office would have no legal objection to an administrative decision, based on this regulation, which would allow reimbursement of parking fees to military details.

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OGC:FJD:kma (5 Jan 63)

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Approved For Release 2005/07/12: CIA-RDP84-00709R000200050001-5/4/2

OGC 63-0049

10 Jan 1963

MEMORANDUM FOR: Deputy Director of Central Intelligence

THROUGH:

Deputy Director (Support)

SUBJECT:

McLean Fire Department, Inc. - Contract

- 1. This moreovandum contains a recommendation in paragraph 6 for approval by the Deputy Director of Central Intelligence.
- 2. The attached contract for ambulance corvice (Tab A) is brought forward for your information and approval in view of the congressional interest (Tab B) in this matter and the general problem of public relations.
- 3. The background of this centract is as follows. Dependable ambulance service for the CIA headquarters installation was an integral part of the modical program in planning for the move to headquarters. To this end, the Medical Staff gut in its budget provision for acquisition of an ambulance by the Agency and operation of such ambulance on a 24-hour basis. Further review was made to see whether a more economical method of providing service could be arranged. McLean Fire Department, Inc. has been responding to calls for ambulance service, but this is on a strictly voluntary basis as they have no obligation to provide such service and could refuse it at any time with no recourse on the part of the Agency. This removes one escential element of dependability.
- 4. The attached contract for a modest fee requires them to provide the service as required by the Agency. This then provides the service at a cost far less than the acquisition and operation by the Agency of its own ambulance. AEC has a similar problem at its Germantown installation. The local volunteer groups are not equipped to provide what is needed so AEC has acquired a "surplus" ambulance from the Department of Defense and keeps drivers available on a 24-hour basis. Maintenance is performed by the General Services Administration. While this does not show any

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direct expenditure of funds, nevertheless the cost to the Government is inherently greater and AEC has informally told us that they would prefer a similar contract method if it were available.

6. I recommend that the attached contract be implemented.

LAWRENCE R. HOUSTON General Counsel

I have a graph on miles

Attachments
Tabs A & B

The recommendation in paragraph 6 is approved

MARSHALL S. CARTER Lieutenant General, USA Deputy Director

Date

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Distribution:
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OGC 63-0092(a)

11 JAN 1963

MEMORANDUM FOR:	Assistant SSA-DD/S	
SUBJECT: 25X1A	Shipment and Storage of Household Effects in Excess of His Weight Allowance	
2. The proposed herewith, recommends claim for shipment and	d memorandum for the DD/S, returned that the full amount of storage of household effects be approved dvance authorization requirement of	25X1A
valuable crystal and rar storage expenses and pr protection for articles o the employee unless the would be inappropriate t request a determination	ovides "Special handling and additional of unusual value will be at the expense of authorizing official determines about	25X1A 25X1A
for his articles of unusua	rstanding that even if he had received ecial handling and additional protection al value, he would still have exceeded ed by regulation for his grade and dependen	FOIAB5

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25X1A

Office of General Counsel

Attachment

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MEMORANDUM FOR: Deputy Director of Central Intelligence

SUBJECT: TDY Per diem for Dependents

- 1. This memorandum contains a recommendation submitted for the approval of the Deputy Director of Central Intelligence. Such recommendation is contained in paragraph 4.
- 2. In a number of cases it is necessary or desirable, in ordering an employee to his permanent post of assignment abroad, to assign him to brief periods of temporary duty at one or more points en route to his PCS point and in some instances this necessitates travel by other than the most direct route. Similar needs arise upon transferring an employ from his permanent post of duty abroad to one in this country or to anothe one outside the United States. In these cases his dependents usually accompany him. To require the employee to bear the expenses of his dependents during these periods of temporary duty appears an unreasonaburden. The problem is particularly apparent at this time because legion enacted in September of 1961, implemented by a Foreign Service regular in August of 1962, granted such authority in the case of Foreign Service

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	presen	
problems. Specific legislation sim	ilar to that now available to the	Foreign F
Service is included in the CIA bill n	low with the Bureau of the Budge	
is intended for submission to Congr	ess in the very near future.	OG
	mmended that you approve the a	itached
4. Accordingly, it is recon		•

(Support)

Attachment

CONCURRENCES:

Date

There would be no legal objection to a determination by the Director or Deputy Director as recommanded above.

> LAWRENCE R. HOUSTON General Counsel

SECHET 12

Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

The recommendation in paragraph 4 is approved.

Date

Marshall S. Carter Lieutenant General, USA Deputy Director

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Next 1 Page(s) In Document Exempt

1 8 JAN 1963

MEMORANDUM FOR: Mr. Houston

SUBJECT:

Drainsville Independent Force -Hatch Act

- 1. On 16 January 1963, I called Clive DuVal, Esq., who, according to the press, is Chairman of the Drainsville Independent Force, for purposes of learning more about this movement which could have possible Hatch Act implications for Agency members.
- 2. DuVal advised that "The Drainsville Independent Force a Movement For Responsible County Government" is a non-partisan political organization organized for the avowed purpose of inducing responsible persons, regardless of party label, to stand as candidates for various county offices; and that the immediate objective is to elect an individual, from the Drainsville District, as a member of the Fairfax County Board of Supervisors in the forthcoming November election.
- DuVal stated that the Hatch Act problem had been considered; and that "they" were of the opinion that, as residents of the Washington. D.C. area, such individuals were not precluded from engaging in this type of local self-government activity. (This is probably true. See Civil Service Pamphlet No. 20, entitled Political Activity, dated November 1961, at page 16). He stated further that he intends to confirm this position by a letter to the Civil Service Commission. In the meantime, he plans to talk with Mr. John Massey, Commission Chairman, whom he knows personally.
- 4. For our information, DuVal is to send to my home address a copy of the organization's charter.
- 5. Meanwhile, I am attempting to obtain from the Commission a copy of its ruling dated November 10, 1949, which approved active participation in local government matters by Federal employees who are residents of Fairfax County.

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OGC 63-0161

18 JAN 1963

MEMORANDUM FOR:

Deputy Special Support Assistant to the Deputy Director (Support)

SUBJECT:

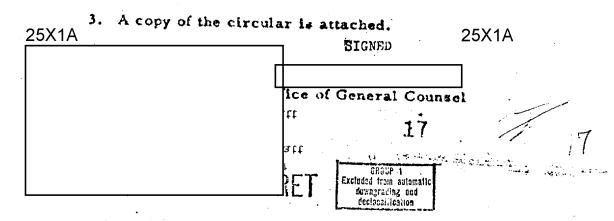
Providing Agency-owned Furniture to Employees for Use in Private

Quarters Overseas

- 1. We have been asked whether there is a legal bar to the issuance of Agency-owned furniture to employees for use in private quarters overseas, when it would be in the best interests of the Agency to do so.
- 2. Bureau of the Budget, Circular No. A-15, paragraph 6 c., states in part:

"Furnishing may be provided in non-Government quarters at specific locations where the head of the agency determines that provision of furnishings is clearly advantageous to the Government, after giving consideration to factors of overall economy, equity, and morale.

Since the reduction of shipping weight allowances for transportation of furnishings, household goods, and personal effects is necessary to effectuate the savings comtemplated by these regulations, agencies should specifically provide for such reductions when furnishings are provided."



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	SUBJECT:	Definition of	Dependent	:5		
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	dependent in qu	uestion does n	ot qualify	as a dependen	t according	OGC
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4 February 1963

MEMORANDUM FOR: Chief, Benefits and Counseling

Branch, Office of Personnel

SUBJECT:

Statement Concerning District of Columbia, Maryland and Virginia

Tax Requirements

Herewith the statement concerning District of Columbia.

Maryland and Virginia tax requirements, for distribution at your meeting tomorrow. You will note it is in very general and elementary terms, and I hope this will be useful.

25X1A

Assistant General Counsel

Attachment

OGC/RHL:cdk (4 Feb 63)
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23

SOME GENERAL INFORMATION CONCERNING DISTRICT OF COLUMBIA MARYLAND AND VIRGINIA TAX REQUIREMENTS

1. INDIVIDUAL RESPONSIBILITY

It is important that each employee understand that it is his responsibility to determine and discharge his own tax obligations.

Information and assistance from the Agency does not relieve him from making his own inquiries and satisfying himself that he is complying with the applicable tax laws. He may consult private lawyers if he desires, and of course the tax officials of the jurisdictions concerned. If there are security or cover considerations, he should consult first with the Office of Security.

2. AVAILABILITY OF INFORMATION

Information may be obtained by calling or writing:

- (a) In the case of the District of Columbia: NA 8-6000, Finance Office, Revenue Division, 300 Indiana Avenue, Washington
- (b) In the case of Maryland: ST 3-6680, Maryland Tax Offi 1319 F Street, Washington, D. C.;
- (c) In the case of Virginia: CR 3-2000, x-312, Fairfax Cou Courthouse, Main & Payne Streets, Fairfax, Virginia.



3. FORMS AND INSTRUCTIONS

The usual form to be filed is:

- (a) In the case of the District of Columbia: Form D-40 or D-40A;
 - (b) In the case of Maryland: Form 502 or 505;
 - (c) In the case of Virginia: Form 760 or 763.

Instructions to assist in completing the Form are obtainable from the above addresses.

4. DATE TO BE FILED

The return for 1962 must be filed:

- (a) In the case of Maryland, by 15 April;
- (b) In the case of the District of Columbia, 15 April;
- (c) In the case of Virginia, by I May.

For those persons who must file an estimate for 1963, the estimate must be filed by the above dates.

5. WHO MUST FILE

Each resident meeting certain minimum income levels must file.

(a) In the case of the District of Columbia, every resident who receives \$1,000 or more gross income in 1962, if single (or married and not living with spouse) or who receives \$2,000 or more combined gross income if married and living with spouse



must file a return;

- (b) In the case of Maryland, every resident must file a return if he has a gross income of over \$300 a year if single (or married and not living with spouse) or over \$1,600 a year if married and living with spouse or if combined income of husband and wife exceeds \$1,600 per year;
- (c) In the case of Virginia, every individual married or unmarried who had for the taxable year a gross income of \$1,000 or more must file a return.

A resident is a person who:-

(a) maintains a place of abode within the state for more than 6 months in the case of Maryland and Virginia or for more than 7 months in the case of the District of Columbia;

OR

(b) is domiciled within the state or the District of Columbia on the last day of the tax year.

Generally, the place of domicile is one's permanent home. Domicile, however, is a somewhat difficult legal concept and if the individual has difficulties, he should seek legal assistance.

6. JOINT RETURNS

In each jurisdiction joint returns may be filed.

7. EXEMPTIONS AND DEDUCTIONS

In each jurisdiction the taxpayer may itemize his deductions or at

his election, take the standard deductions.

8. EXEMPTIONS

In each jurisdiction exemptions are allowed for dependents.

- (a) In the case of the District of Columbia, \$1,000 for the taxpayer, \$1,000 for his spouse, and \$500 for each dependent;
- (b) In the case of Maryland, \$800 for the taxpayer, \$800 for his spouse, and \$600 for each dependent;
- (c) In the case of Virginia, \$1,000 for the taxpayer, \$1,000 for his spouse, and \$200 for each dependent.

9. NONRESIDENT REQUIREMENTS

The foregoing applies with respect to persons resident in the jurisdictions involved. The new Virginia nonresident tax does not apply for 1962 so nothing need be done with respect to 1962. However, the nonresident of Virginia who commutes to work in Virginia and meets the minimum income prescribed is required to file an estimate for 1963. This must be filed by I May 1963.

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several states and Hawaii . statutory and United States sisters of an	s of the Un" It is regulatory of unmarr employee	ited States is our opini y language ; ied depende assigned ab	tal United State of America exc on, therefore, pertaining to tr ent children, be croad is not lim mployee may be	luding Alaska that since avel to the rothers, or lited to travel	
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OGC 62-2973(a)

6 February 1963

MEMORANDUM FOR: Chief, Foreign Documents Division

SUBJECT:

Commercial Reproduction and Dissemination of the "Consolidated Translation Survey"

- l. You have requested our opinion as to whether the "Consolidated Translation Survey" (CTS), a monthly publication issued by the Foreign Documents Division with CIA attribution, may be duplicated by a private commercial firm and sold on a subscription basis to its academic customers. You have stated that the CTS is available to any private organization through the Library of Congress. You have specifically requested advice on the following points:
 - (a) May this report be reproduced and sold by a private organization without violation of law?
 - (b) Is there any implied copyright in the Government in this report?
 - (c) Is the report in the public domain as a result of its deposition with the Library of Congress?
- 2. The answers to the first and third questions are in the affirmative and the second in the negative. Whether a Government report may be reproduced and sold privately depends only on whether such report is considered to have been published. Thus, materials of a classified nature, for official use only, or of an operational or administrative nature would not, unless they had been given general distribution outside of Government, be considered as published. After material has been published by the Government, it may not be subject to copyright, unless it incorporates other material already copyrighted by private parties. 17 United States Code, Section 8, states in part:

"No copyright shall subsist in the original text of any work which is in the public domain . . . and has not been

already copyrighted in the United States, or in any publication of the United States, or in any reprint (emphasis ours)

- This Section of the Code has been interpreted a number of times by the courts. In one case, Public Affairs Association, Inc. vs. Rickover (1960), 284 Fed 2d 262, the court stated that any material commissioned or printed at the cost or direction of the United States Government would be considered as published and not subject to copyright. It is our opinion that deposition with the Library of Congress by a Government agency of printed material would be tantamount to public dissemination and thus would preclude a later allegation that it was of a purely internal or administrative nature. This is not to say that the Government could not object to any inaccuracy in the reproduction of Government publications by private parties.
- 4. You have asked our assistance in phrasing a reply or advice as to whether a written reply should be avoided. We do not have any strong feelings as to whether you should or should not reply in writing to the private parties wishing to duplicate the Consolidated Translation Survey. We would suggest, however, that you tell them to approach the Library of Congress directly for release of the publication. We note in their letter to you the question as to whether CIA should or should not be retained as the source of the compilation. It would appear that they would take your advice in this matter.
- 5. If we can be of any further assistance, please call upon us. We are returning your background papers.

25X1A

Attachments	Office of General Counsel
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Approved For Release 2005/107/122-: CIA-RDP84-00709R000200050001-5

OGC 62-2486(a)

19 FEB ¹⁹⁶³

MEMORANDUM FOR:	Assistant Deputy Director of Security (PPS)	
SUBJECT: 25X1A	United States Government Liability at Firing Range	25X
REFERENCE:	Memorandum to Chief, Physical Securit Division, CS, from Security Officer, dtd 3 October 1962, re: U.S. Govern- ment Liability atFiring Range!	y 25X1
25X	(1A	
from two proposed activities formation of a private gun of facilities of the Firing shooting purposes, and who employees only. The second available to Boy Scout troop badge qualifications. You a	remorandum presents questions arising s at The first activity involves the lub which will regularly utilize the Range during non-duty hours for target se membership will be comprised of d proposal is that the range be made as for firing .22 Caliber Rifles for merit request our advice as to liability factors overnment arising from the two activities. tely.	25X]
might be held liable for an theory, and the one of probabilities would subject the Government Federal Tort Claims Act, if the United States liable for of Federal employees within same manner and to the same like circumstances. In shonegligent act or omission of	ssible theories by which the Government injury to a gun club n ember. The first able applicability to the present facts, ent to liability under the terms of the 28 U.S.C. Sec. 1346 (b). This act makes the negligent or wrongful acts or omission in the scope of their employment, in the me extent as a private individual under ort, if a club member is injured by a f an employee of the Government, the United States in the Federal District	1.5
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- 3. Notwithstanding the fact that the act causing the injury occurs on Federal property, the United States must look to the law of Virginia to determine the duty of care it owes to the gun club members. 1 L.Ed. 1647-52. Because of the benefits accruing to the Government by allowing this recreational activity, the law would classify the club members as invitees. Virginia law states that a landowner must use ordinary care both in rendering his premises reasonably safe for invitees and toward the person of invitees. Nolan v. United States (1951 CA 4th Va.) 186 F. 2nd 578.
- 25X1A 4. If the Government were engaging in an activity at [to which Virginia law would impose absolute liability, irrespective of negligence, then this standard would be applicable to an action against the United States under the Tort Claims statute. United States v. Praylou (1953, CA 4th S.C.) 208 F. 2nd 291. We have found no Virginia statute or decision which would impose absolute liability upon the operator of a Firing Range simply because of the nature of the activity involved. However, it is felt that in determining whether reasonable care was used in the maintenance and operation of a Firing Range for the safety of those permitted to use it, the potentially dangerous nature of the activity would be considered, and a strict test would be applied as to what was reasonable care. Any relaxation of, or deviation from, the standard range safety regulations for the convenience of the club is inadvisable from the viewpoint of the Government's liability. However, if a club member is injured by the negligent act of another club member, and the Government is not negligent, through a negligent act of an employee in a supervisory or other capacity, then the Government will not be liable to the injured man.
- 5. It is our opinion that this activity would not come within the terms of the Federal Employees Compensation Act. Under that act, as a prerequisite to compensation, the injury must have been sustained while in the performance of...duty..."; or, in synonymous language frequently used by the courts, the injury must arise "out of an in the course of employment." The gun club, on the other hand, as your memorandum indicates it will be constituted, appears to be what courts call a "recreational activity; and injuries incurred in "recreational activities" are not compensable under the act. In the matter of Bernard D. Blum and War Department, Decisions of the Employees' Compensation Appeals Board, Vol. I, p. 1.

RET

- 6. It is our opinion that, from a security standpoint, the Agency would be in a better position if the gun club activity did come within the terms of the Federal Employees Compensation Act. When an injury results from an activity within the Act. there is provision for an administrative remedy, which is final and from which judicial review is precluded. Lewis v. United States, 89 U.S. App. D. C. 21, 190 F. 2nd 22; Calderon v. Tobin, 38 U.S. App. D.C. 134, 187 F. 2nd 514; Nolen v. United States. 109 F. Supp. 391. Thus, under the FECA administrative procedure, information concerning the circumstances of the injury would only be available to cleared individuals. It is our opinion that the club might well be set up so as to come within this Act. We are willing to discuss this matter further if the Office of Security, and others interested, so desire.
- 7. Although there is no legal prohibition against allowing the Boy Scouts to use the Firing Range, and beneficial public relations might result, we suggest that it is inadvisable because of the legal implications involved. The dangerous nature of the activity, combined with the youth and inexperience of the boys. would impose a high standard of care upon the Government. Furthermore, a Boy Scout, if injured, would have access to the Federal District Court under the Federal Tort Claims Act. In a Federal court, broad procedures for obtaining information (discovery) would be available to the plaintiff which might present the danger of possible compromise of cover as well as revelation of other classified information. It would be unfortunate if, under such circumstances, the Agency felt it necessary to refuse a Federal court information which the young plaintiff desired to prove his case.

25X1A	SIGNED		14
Office of	General	Counsel	

Attachment: Referenced memorandum Distribution:

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OGC/JMC:mmm (19 Feb 63)

OGC 62-2747(b)

19 February 1963

MEMORANDUM FOR: Assistant SSA-DD/S

SUBJECT:

Per Diem to Dependents of Employees
Delayed En Route to PCS Point by

Official Business

REFERENCES:

A. OGC memo to ASSA-DD/S, dtd
28 Dec 62, Subject: Retroactive
Amendment of Travel Order -

25X1A

B. DD/S memo to DDCI, dtd 18 Jan 63
Subject: TDY Per Diem for Dependents

25X1A

25X1A

2. Since the submission of your first request, which occasioned the referenced memorandum from our Office, the Deputy Director, on 2 February 1963, approved the policy of per diem during such



periods of TDY for dependents of employees. His approval, as you know, however, was limited to a case-by-case basis. He stated that the authorization for such TDY travel should be made in light of possible dependents' involvement and approvals for dependents' TDY travel made only by the Deputy Director concerned. We believe that the necessary approval of the appropriate Deputy Director in any such instance could be effected either before or after the employee and family have traveled. To the extent possible, the travel order should centain a specific authorization for per diem for dependents while the employee is in TDY status and a Deputy Director should give his necessary approval in advance of travel. However, where travel orders are modified, while the employee is en route, to provide for a TDY stopover or where an employee is ordered by the field to delay his PCS travel for TDY, we would see no objection to approval by the appropriate Deputy Director after travel has been completed. However, in all instances, a Deputy Director must make a positive determination that the employee will be allowed per diem for his dependents before the final approval of claim for such per diem. Such approval authority is not delegable as presently constituted.

25X1A	3. The facts of the present case precede the DDGI's determination. However, because of the timing of this case, we would have no objection to DD/S approval of a voucher which would include dependents' per diem, although this is not to say that other cases which occurred prior to the DDGI's policy determination could be reviewed with favor at this point. It may be appropriate prior to payment of this claim to request the DD/P's approval as the "Deputy Director concerned."
	25X1A

Attachments:

Background papers

OGC:JBU:ewb

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Subject Trans 3 C. R. Pop

Signer

√Chrono

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Office of General Counsel

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OGC 63-0524(a)

25 February 1963

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT:

14 February 1963 Letter from Secretary of Labor -- Executive Order 10988

- 1. We have been asked to review the 14 February 1963 letter from Secretary of Labor Willard Wirtz concerning rules for nomination of arbitrators under Section 11 of Executive Order 10988. On 26 February 1962, Assistant Attorney General Nicholas Katzenbach interpreted Executive Order 10988, Section 16, to exclude automatically the Agency from application of the Order, except for Section 14, without requiring an administrative determination based on national security considerations.
- 2. It was decided orally between the Office of Personnel and the Office of the Secretary of Labor that a 28 August 1962 letter addressed to the DCI from the Secretary of Labor on the same subject required no reply because of the Agency's exempt status. We would suppose that this approach might best be taken in the present instance.

25X1A	•		
Office	of General	Counsel	

Attachments:

DD/S Background correspondence

OGC:JBU:ewb

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Subject Pasonne

Signer

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OGC 63-0492(a)

25 February 1963

	SUBJECT:	Request for Approval of Outside Activity - 25X1A	
5X1A	does not appear that the	18 February 1963 transmittal slip, it ere would be any violation of the Hatch ely attends "business meetings and Young Republican Club of the District	
	Act Section of the Office Commission. She advi	er at the Club's meetings. However,	25X1/
	she may not take an ac on motions presented, nor may she serve on	but she may not make or second motions.	·
	on motions presented,	but she may not make or second motions, any committees.	
	on motions presented, nor may she serve on a Attachment: Outside Activity Appr	but she may not make or second motions, any committees. 25X1A	
	on motions presented, nor may she serve on a Attachment: Outside Activity Appr	but she may not make or second motions, any committees.	
	on motions presented, nor may she serve on a Attachment: Outside Activity Appr Rec OGC:EFM:ewb Orig & 1 - Addressee	but she may not make or second motions, any committees. 25X1A	
	on motions presented, nor may she serve on a Attachment: Outside Activity Approximately Control of the Control	but she may not make or second motions, any committees. 25X1A	

Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

OGC 62-3224(a)

4 March 1963

(Hand Carry)

MEMORANDUM FOR:

Deputy Comptroller

SUBJECT:

Disposal of Agency Financial Records

1. We refer to our several discussions regarding the financial records disposal problem occasioned by the withdrawal of the General Accounting Office site auditors and the provision of law that precludes heads of agencies from disposing of Government financial records yet unsettled by GAO (44 U.S.C.A. section 374). You will recall we noted that the limitation of section 374 also contained the wording "except upon the written approval of the Comptroller General of the United States, " and that we suggested that since the DCI and the Comptroller General had agreed that GAO audit of Agency accounts would be terminated, it would seem appropriate, in the circumstances, that the Agency propose a records retirement program for Comptroller General's approval pursuant to the authority granted to him by section 374. You will recall also that it was decided that, preliminary to such action being taken. Agency decisions regarding internal audit responsibility and record retention periods would be required. When these have been made, if you will contact us we would be happy to assist in preparing an Agency proposal for consideration by the Comptroller General.

2. Your two documents are returned.

25X1A
Assistant General Counsel

Attachments -

- 1 Memo fr Compt to DCI, dtd 18 Jun 62, re GAO Audit of CIA, Tab A and Tab B attached.
- 2 Copy of ltr fr Compt Gen of U.S. to Hon. Carl Vinson, dtd Jun 21, 1962.

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Regulations which state that it is the responsibility of each department and establishment to see that travel orders authorise only such per diem allowances as are justified by the circumstances affecting the travel with the caution that care should be exercised to prevent the fixing of a per diem allowance in excess of that required to meet the necessary authorized expenses. It is our opinion that, while this Office could comment on this question if there was a clear abuse of administrative discretion, such instance is not evident from the facts submitted.

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OGC 63-0593

5 March 1963

MEMORANDUM FOR: Office of Personnel

ATTENTION:

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SUBJECT:

Invitee Travel

- 1. This is in response to your recent inquiry to as to the impact of the Comptroller General Decision B-144174. October 19, 1960, 40 Comp. Gen. 221, on the invitee travel practices which this Agency follows. I understand we do invite certain prospective employees to Washington for interviews and consultations, and that we pay the travel expenses in these cases.
- 2. I believe the Comptroller General decision supports and endorses our practice. In this decision the Comptroller General referred to earlier decisions which authorize the payment of travel expenses for applicants for employment in positions which are exempt from the Civil Service laws and regulations or for appointments which are excepted appointments within the Civil Service rules. B-144174 is in accord. It holds that because the employing agency, rather than the Civil Service Commission, is charged with selecting a candidate, the expenses "necessary for the fulfillment of that duty properly are chargeable to funds available for administrative purposes." You have advised that the Agency has elected, as a matter of policy, to pay invitee travel expenses only with respect to certain categories of personnel, namely, those in short supply or in demand generally. The new decision would not require change in this practice.
- 3. The Comptroller General pointed out also, however, that statutory authority is lacking for the payment of per diem in lieu of subsistence, and payment therefore may be made only upon an actual expenses basis. He suggested also that the travel authorization place a limitation of \$12 per day (the then current maximum

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per diem for Government employees generally) on the amount of actual subsistence expenses, in accordance with section 6.1 of the Standardized Government Travel Regulations. Since I understand our practice is to follow these monetary limitations, I believe the subject opinion would require no change in Agency practices.

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Office of General Counsel

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C MAR 1963

MEMORANDUM FOR THE RECORD

SUBJECT: Employee Publications

- 1. This memorandum is concerned with an analysis of possible methods of Agency control over employee and ex-employee authored books and articles dealing with material or subjects affecting the Agency or intelligence activities in general.
- 2. The use of a liquidated damage clause in the Agency Secrecy Agreement has been considered as a means of establishing effective control over such publications. Liquidated damages, however, will be enforced by the courts only if it is determined ". . . that the amount was fixed in good faith as an estimate by the parties of the probable injury to be suffered from a breach. . . . " ". If the courts find that it was not such a proper estimate but was fixed merely as a deterrent to prevent a breach, it will be termed a penalty and the agreement will not be enforced. " McCormick on Damages pg. 599. In line with the above, in Priebe and Sons v. United States, 332 U.S. 407, 92 L. Ed. 32 (1947) the Court stated that liquidated damages are enforced when they are found to be "fair and reasonable attempts to fix just compensation for anticipated loss caused by breach of contract." The Court found that the liquidated damage clause in this case was included not to make a fair estimate of the damages but rather to serve only as an added spur to performance and as such would not be enforced. In our case, as a practical matter, sufficient control over employees could be exercised only if the amount decided upon as liquidated damages was large enough to deter any breach by the employees. In most cases, such a sum would not qualify as a fair estimate of the damage and would not be enforced by the courts for the reasons given above.

3. The Agency Secrecy Agreement includes the following restrictive covenant:

Inasmuch as employment by the Government is a privilege not a right, in consideration of my employment by CIA I undertake not to publish or participate in the publication of any information or material relating to the Agency, its activities or intelligence activities generally, either during or after the term of my employment by the Agency without specific prior approval by the Agency.

Although it is difficult to safely predict with any degree of certainty how a court would react to an attempt on our part to enforce this covenant, available case law does suggest the general grounds on which the Agency would be able to base its right to injunctive relief.

- 4. The cases dealing with the enforcement of covenants not to compete are analogous to the fact situation at hand. Such negative covenants by an employee are not void per se but rather are held to be invalid only if they are unreasonably in restraint of trade. "Whether such an agreement is unreasonable may be determined by weighing the competing interests of the employer and employee and giving due consideration to the interests of the public." DeLong Corp. v. Lucas, 176 F. Supp. 104, 121 (N. Y. S. D. 1959). In the above-cited opinion, the court stated that it is necessary to consider the following aspects of a specific situation:
 - (a) Is such covenant necessary for the protection of the employer?
 - (b) Is the impact on the former employee such as to unduly restrict his means of livelihood?
 - (c) Is the covenant an unreasonable restraint on the public?
- 5. Although in most cases general restraints have been held to be unenforceable, it is because they are found to be so in light of the fact situation at hand and not because they are

unreasonable per se. The restraint must coincide with the protection needed and accordingly must be reasonable with regard to time, territory, and the nature of the employment. Chemical Fireproofing Corp. V. Krouse, 155 F. 2nd 422 (App. D.C. 1946). In Sammons v. Schartz, 55 F. Supp. 714, 716 (S. D. N. Y. 1944), the Court enforced a covenant by which the employee agreed not to publish, print, sell, etc., any books containing the words "Who's Who" as part of the title. The Court stated that when the restraint provided for in the contract is general, but at the same time is coextensive with the interest to be protected and with the benefit to be conferred, there seems to be no good reason why, as between the parties, the contract is not as reasonable as when the interest is partial and there is a corresponding partial restraint. Accordingly, the fact that the scope of the restrictive covenant is unlimited is not grounds in itself to preclude enforcement. In our situation the Agency would be able to build a fairly strong case as to the reasonableness of such restraint especially in light of the nature and function of both the CIA and intelligence activities in general. Adverse impact on the national interest as a result of such publications, if such can be shown, would also be a strong argument in our favor. The fact that the employee entered into such agreement on his own accord would also bear some weight. If such a factual situation can be put before a court, there is considerable question as to whether the covenant can be viewed as unduly oppressive and therefore unenforceable.

6. Under certain considerations equity will prevent both disclosure and use of trade secrets by a former employee who has obtained such information in breach of a contractual or fiduciary relationship. Any action seeking equitable relief against such an employee could be predicated upon such relationships. Trade secrets have also been protected by the courts as a property right of the owner. Ferroline Corporation v. General Aniline and Film Corporation 207 F. 2d 912, cert. den. 98 L. Ed. 1093, reh. den. 347 U.S. 979 and 343 U.S. 841. Such case law would enable the Agency to show the existence of a fiduciary relationship between it and the employee and the consequent duties and obligations imposed on the employee as the result of such relationship.

- 7. It is another question as to whether or not in a specific situation a court would regard classified information or intelligence methodology as a trade secret. While classified information might be regarded as falling within one of the various worded definitions of secrets, such as, any "information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who don't know or use such secrets, "Sandlin v. Johnson 141 F. 2d 660 (8th Cir. 1944) the protection given trade secrets has been said to be based on the doctrine of unfair competition, Newell v. O.A. Newton and Son Company, 104 F. Supp. 162 (1952). In other cases dealing with trade secrets courts have stated that an employee who leaves his place of employment may take with him all the skills and information received as long as he takes nothing belonging to the employer. This would be especially pertinent in the case of the former employee who is not actually using information obtained from the Agency but rather his past reputation or skills acquired as a CIA employee. In such cases it would be wiser for the Agency to put more emphasis on case law dealing with restrictive covenants not to compete.
- S. Both the cases dealing with trade secrets and those which have considered the problem of covenants not to compete should be viewed as a guideline by which we may seek equitable relief. The Agency should have little or no problem presenting enough facts to show the nonexistence of an adequate remedy at law as well as the irreparable injury which would result from any prospective defendant's action. The cases accentuate the flexibility of the courts in such instances. By presenting an argument based on the restrictive covenant and the fiduciary obligation, we would be presenting the court with a fact situation wherein it would have sufficient leeway to find ample grounds to enjoin. Although it is impossible to predict the outcome of any attempt by the Agency to enforce the covenant contained in the Secrecy Agreement, we feel that such an action would have a fair chance of success.
- 9. The fact that the United States Government will be the party seeking relief in any suit is a factor which may very well work to our favor. The courts on various occasions have stated that where the public interest is involved their equitable powers will assume a broader and more flexible character, than when only a private controversy is at stake,

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Porter v. Warner Holding Company, 90 L. Ed. 1332, 1337, (1945). This tendency of the courts could very well lend itself to an a fortiori presentation if relief could be shown to be in the national interest. The courts have also indicated that the United States is entitled to injunctive relief if necessary to protect Federal property rights, the general welfare, or to abate a public nuisance. United States v. Petersen, 91 F. Supp. 209 (S. D. Calif. N. D. 1950).

- 10. In United States v. Chadwick, 76 F. Supp. 919 (1948), the court applied similar principles and held that an injunction would lie to prohibit a former inspector of the Department of Labor from consulting with or advising his civilian employees or their attorneys in a matter pending while he was employed by the Government. The court found that the defendant's employment by the Government was ". . . in a confidential capacity and the information obtained by him in the course of such employment was confidential and privileged." The court also held that notes, memoranda, and other material taken by the defendant in the course of said employment ". . . were and are the property of the Government." It was further stated that ". . . revelation by the defendant of confidential information obtained in the course of his official duties. . . will result in irreparable damage to the plaintiffs in that if permitted will destroy confidence in the law and the integrity of the Government service, /and / render difficult, if not impossible, enforcement of . . . " certain statutes. The opinion here expressly noted the lack of any adequate remedy at law.
- 11. It has been suggested that an assignment of future rights to any literary property dealing with intelligence material be one of the conditions of employment in the Agency. While we feel that this assignment would be useful to deter an employee from the publication of such material, this method has certain disadvantages which should be considered. It is quite doubtful whether or not a court would here grant specific performance which is the only remedy suitable for our purposes. Also to be considered is the unfavorable publicity which could result from what might be termed an unnecessary and harsh measure. While this charge could also be levied against the use of the restrictive covenant, we believe it is more likely to be raised in this case. Although these factors do not impair the deterrent value of such an assignment, we believe that they should be weighed against it. A provision calling for such an assignment could easily be included in the employee's secrecy agreement.

12. In order to emphasize to employees the established Agency policy against their publication or their participation in the publication of any information or material relating to the Agency, its activities, or intelligence activities generally, we believe the following should be added to the restrictive covenant in the secrecy agreement, quoted in paragraph 3:

I understand that it is established Agency policy to refuse approval to publication of or participation in publication of any such information or material.

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cc: Deputy Director (Support)

Assistant to the DCI, Colonel

Director of Security

Director of Personnel

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Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

OGC 63-0162(b)

1 5 MAR 1963

MEMORANDUM FOR: Chief, Special Operations Group Foreign Intelligence

SUBJECT:

Request for Legal Study of Visa and

Citizenship Problems

REFERENCE:

SPOG Memo No. 843

- 1. This supplements my Il February 1963 memorandum and is a study of the processes by which a foreign national employed by the U.N. may gain U.S. citizenship.
- 2. Generally, an applicant for naturalization must have been lawfully admitted for permanent residence. This term, lawfully admitted for permanent residence, means the status of having been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws, such status not having been changed. Immigration and Nationality Act (INA) \$ 101(a)(20), 8 U.S.C.A. \$ 1101(a)(20). By definition, therefore, it excludes aliens classified as nonlimingrants.
- 3. An alien applying for admission to the U.S. is classified as a nonimmigrant if he is a member of one of the following categories:
 - (a) foreign diplomatic or consular officer;
 - (b) temporary visitor;
 - (c) transients through the U.S., or to and from U.N. Headquarters District and foreign countries;
 - (d) crewmen;
 - (e) traders and investors;
 - (f) students;
 - (g) foreign government representatives to, and officers and employees of, international organizations;
 - (h) temporary employees;
 - (i) representatives of information media; or
 - (j) exchange aliens. INA 8 101(a)(15), 8 U.S.C.A.
 8 1101 (a)(15).

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A nonimmigrant alien, other than a crewman, in the U.S. may have his status adjusted to that of an alien lawfully admitted for permanent residence (as a quota or nonquota immigrant) provided, among other things, he is eligible to receive an immigrant visa, he is admissible to the U.S. for permanent residence, and an immigrant visa is immediately available to him at the time his application is approved. INA \$ 245, 8 U.S.C.A. \$ 1255. In the absence of a change of status under INA section 245, a nonimmigrant is generally inadmissible for permanent residence and may not apply for naturalization.

- 4. Immigrants are, of course, admissible for permanent residence and are divided into two classes: quota immigrants and nonquota immigrants. A quota immigrant is an immigrant who is subject to the numerical restrictions of an annual quota. Under the quota system, only a certain number of immigrant visas may be issued to natives of each quota area. INA \$ 201, 8 U.S.C.A. \$ 1151. However, if an alien is chargeable to a different quota from that of his accompanying spouse, the quota to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the quota of the accompanying spouse if such spouse has received or would be qualified for an immigrant visa and if the quota to which such spouse has been or would be chargeable is not exhausted for that fiscal year. INA \$ 202(a)(2), 8 U.S.C.A. \$ 1152(a)(2). The following four preferences govern the issuance of quota visas:
 - (a) aliens whose services are urgently needed in the U.S.;
 - (b) parents of citizens of the U.S.;
 - (c) spouses or the unmarried sons and daughters of aliens who have been lawfully admitted to the U.S. for permanent residence; and
 - (d) brothers, sisters, married sons or married daughters of citizens of the U.S. INA \$ 203. 8 U.S.C.A. \$ 1153.

The remaining portion of any quota is made available to qualified nonpreference quota immigrants.

- 5. A nonquota immigrant is not subject to the numerical restrictions of the quotas. Generally, the following persons are eligible for nonquota immigrant visas:
 - (a) spouses and children of U.S. citizens;
 - (b) returning resident aliens;

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- (c) natives of Canada, Mexico, Cuba, Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America;
- (d) certain former U.S. citizens women expatriates and military expatriates;
 - (e) ministers of religion;
 - (f) certain U.S. Government employees; and
- (g) eligible classes created by special legislation, such as orphans, certain aliens admitted under the Refugee Relief Act of 1953, certain Portuguese victims of a natural calamity in the Azores Islands, etc. INA \$ 101(a)(27), 8 U.S.C.A. \$ 1101(a)(27).
- 6. Once the immigrant, quota or nonquota, has been lawfully admitted to the U.S. for permanent residence, he may petition for naturalization if he meets the following general requirements:
 - (a) He must be at least 18 years of age. 8 C.F.R. # 334.11.
 - (b) He must be able to understand English and be able to read, write, and speak words in ordinary usage in that language. INA \$ 312, 8 U.S.C.A. \$ 1423.
 - (c) He must have resided continuously in the U.S. for at least five years and, for the last six months of that period, to have resided in the State in which he petitions for naturalization. Continuous residence does not mean that the applicant may not have been outside of the U.S. for short periods during the required residence. These short periods of absence may be as long as six months and, under certain circumstances, permission to be absent for a longer period may be obtained. However, he must have been physically present in the U.S. for at least half of the required five-year residence period. INA \$ 316, 8 U.S.C.A. \$ 1427.
 - (d) The applicant must be a person of good moral character. Ibid.
 - (e) The applicant must be "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States." Ibid.

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Certain persons, whose spouses are U.S. citizens, may be exempted from all or part of the requirements pertaining to residence or physical presence in the U.S. There are also special naturalization benefits for veterans, wives or husbands of U.S. citizens, and children of U.S. citizens.

- 7. Referring specifically to the questions posed in paragraph 2b of 5POG memorandum 843:
 - (a) A foreign national employed by the U.N. Secretariat in New York would normally have been admitted to the U.S. as a nonimmigrant under category (G) relating to representatives to, and employees of, international organizations. His status would then have to be adjusted to that of an alien "lawfully admitted for permanent residence" before he could petition for naturalization. Usually, this could only be accomplished as provided in INA \$ 245; namely.
 - (1) he would have to apply for adjustment of his nonimmigrant status to that of a person admitted for permanent residence;
 - (2) he would have to be eligible to receive an immigrant visa and be admissible to the U.S. for permanent residence; and
 - (3) an immigrant visa would have to be immediately available to him at the time his application is approved.
 - (b) If he were employed by the U.N. abroad, and not otherwise admissible to the U.S., the only difference would be that he would first have to gain admission to the U.S. as a nonimmigrant category (G).
 - (c) Insofar as naturalization is concerned, the individual's status with the U.N., whether a professional or general service type employee under short or permanent term contract, would make no difference.
 - (d) His current citizenship status is extremely important due to quota restrictions.

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- (e) His citizenship in good standing of a Communist country would apparently make no difference except I believe he would be investigated more closely due to INA \$ 313. 8 U.S.C.A. \$ 1424 which prohibits naturalization of persons favoring totalitarian forms of government within ten years immediately preceding the filing of the petition for naturalization.
- (f) As a refugee or displaced person, however, his eligibility for permanent resident status may be affected by special legislation. For example:
 - (1) The Displaced Persons Act of 1948, as amended, \$ 10, 50 U.S.C.A. App. \$ 1951-1963, provided that future quotas could be charged for current admissions. These persons were therefore able to be admitted even though the current quota was already filled. This Act became inoperative on June 30, 1954.
 - (2) The Refugee Relief Act of 1953, 50 U.S.C.A. App. 8 1971-1971q, succeeded the Displaced Persons Act and provided for the admission of persons who had fled, escaped, or been expelled from Communist-dominated countries. It did not require a charge to quotas at all.
 - (3) Section 1 of a Joint Resolution of July 14, 1960. 8 U.S.C.A. 8 1182, authorized the Attorney General to parole, as opposed to admit for permanent residence, certain refugees into the U.S. who had fled from Communist countries and could not return because of fear of persecution because of race, religion or political beliefs.
- (g) An Act of July 25, 1958, 8 U.S.C.A. 8 1182, allowed Hungarians paroled into the U.S. on an emergency basis after the 1956 revolution to adjust their status to that of permanent residents after they had been here for two years. I have not found any such legislation specifically applicable to Chinese. Cubans are eligible for nonquota immigrant visas and on obtaining such visas are admissible for permanent residence.

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(h) A	foreign national employed by the Secretariat
may acqu	ire U.S. citizenship without the disclosure of
	nt interest by applying for a petition for natural-
ization at	any Immigration and Naturalization Service
Office, as	nd by complying with the normal naturalization
procedure	e. He will only be allowed to petition for natural-
ization if	he meets the general requirements set forth in
paragraph	a 6 of this memorandum.

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thetica	al si	tuations.	We can.	of cours	e, be mo	re specific	with
respec	et to	an indivi	dual case	•		• .	

9. Attached are thermofax copies of all the authorities cited except for INA 88 312, 313, 3 C.F.R. 8 334.11 and the Refugee Relief Act of 1953, copies of which are not readily available. However, the latter authorities themselves are available in the Agency library and, if you desire, we will have photostats of them forwarded to you.

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Office of General Counsel

Attachments a/s

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LATELYCE OF P. MURRELY

1 8 MAR 1963

Office Chief of Finance
Department of the Army
Washington 25. D. C.

Attention: Chief, Legislative and Special Programs Branch

Dear Sir:

1962 letter, copy of which is enclosed, to the U. S. Army Retired
Pay Division in Indianapolis, Indiana, regarding the dual compensation case of

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OGC is a contract employee of this Agency. CIA

employs him under a fixed-term contract

This supplements our Director of Personnel's 8 November

renders contractual services in return for compensation which has been negotiated to the mutual satisfaction of both parties. Neither his services nor his compensation relates to a "position" or "grade" as used in the Classification Act of 1949, 63 Stat. 1954, 5 U.S.C.A. 1071 (1949). Compensation paid contract individuals by this Agency may, for convenience, equate to a GS



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Office Chief of Finance, Department of the Army .

pay schedule. There is, however, no legal requirement that this be done since by the authority of section 202(16) of the Classification Act, 5 U.S.C.A. 1082, that Act, except for Title XII pertaining to miscellaneous provisions, does not apply to the Central Intelligence Agency.

Consistent with authority and based upon mutual consent of the contracting parties, the contract with was renegotiated effective 1 October 1962 to provide compensation for services rendered in the amount of \$7,397.38 per annum. The new arrangement will continue for a period of two years unless sooner terminated upon 30 days notice by either party or modified by a utual consent.

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Sincerely,

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Office	of	General	Counsel

Enclosure

25X1A , cc: OP/CPD - 4 Attn: 25X1A

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OGC:EFM:ibm (15 Mar 63)

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21 March 1963

MEMORANDUM FOR THE RECORD

SUBJECT: Common Carrier Rates for Government Properties

whether the Agency materier for transportate employees' property for rates and tariffs sched Commission. 49 U.S. this chapter shall prevof property free or at a Linformed a Government agency a	eputy Chief, Transportation Branch, lled on 20 March to inquire as to be enter into a contract with a common tion of Government and Government or rates less than provided within the ule approved by the Interstate Commerce C. A. 22 states in part: "Nothing in ent the carriage, storage or handling reduced rates for the United States" that the special rate contract between and the common carrier is well docu-
mented in practice.	25X1A 25X1A

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OGC 63-0810

2 2 MAR 1963

MEMORANDUM FOR: Director of Personnel

SUBJECT:

Definition of "Resident Alien".

- 1. This is with reference to your inquiry of this Office concerning the request in WAEPA's 14 March 1963 letter for a definition of a resident alien.
- 2. The term "resident alien" is not defined as such in the Immigration and Nationality Act (INA). However, it is our understanding from 29 January 1963 Memorandum for the Record that the Agency contemplates insuring "permanent resident aliens". A "permanent resident alien" may be defined as one enjoying the status of having been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws, such status not having been changed. INA \$ 101(a)(20). 8 U.S.C.A. \$ 1101(a) (20).

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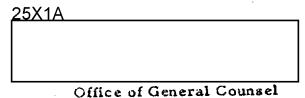
- 3. We wish to point out that this statutory definition would not cover aliens temporarily in the U.S. as nonimmigrants, for example:
 - (a) foreign diplomatic or consular officers;
 - (b) temporary visitors;
 - (c) transients through the U.S., or to and from U.N. Headquarters District and foreign countries;
 - (d) crewmen;
 - (e) traders and investors;
 - (f) students;

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- (g) foreign government representatives to, and officers and employees of, international organizations;
 - (h) temporary employees;
 - (i) representatives of information media; or
- (j) exchange aliens. INA \$ 101(a)(15), 8 U.S.C.A. \$ 1101 (a)(15).
- 4. Neither, of course, would it cover one who gained entry into the United States in violation of law, as by falsely denying conviction of a crime involving moral turpitude, by entering without inspection, by stowing away on a ship, or by becoming a member of a ship's crew and deserting.



Attachments -

Basic and Background OGC: EFM: ibm (21 Mar 63)

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- 1 Subject alien
- 1 EFM Signer
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22 March 1963

MEMOR	ANDUM	FOR THE	RECORD
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	MEMORANDOM FOR THE RECORD	
	SUBJECT: Claim for Shipment of Household Goods	
	25X1A	
5X1A	25X1A	
	1. On 20 March 1963 25×14 asked me	25X1A
	to review a case in which traveled from	20/1/
	Washington, D. C., to his new PCS point overseas at	
	He placed his household goods in storage with the Union	
	Storage and Transfer Company of Washington, D. C., who were	
	then to ship the goods to him in 25X1A	
	2. He drew an advance of \$6,000, \$667.50 of which was	
	utilized to pay the storage and shipping expenses to Union.	
	3. After several weeks, he had received no word on his goods and in contacting the company discovered that it had gone into receivership and that his goods were being held until notification by him of how to dispose of them. He contacted the Federal Storage Company of Washington, D. C., which secured the release of his goods and shipped them ultimately to The entire transaction required about seven months. In the process, an item-by-item inventory revealed that had suffered a \$2,000 loss as a result of stolen and broken property and, of course, the \$667.50 loss which he could not recover from	25X1 25X1A
	the bankrupt company. While he has filed against the receivership for these amounts, it is unlikely that he stands much chance of recovering. He reimbursed the Agency the major part of the advance, but has not as yet repaid the original \$667.50 shipping cost paid to Union Storage.	
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Approved For R 1005/07/12 : CIA-RDP84-00709R000200050001-5

double p determi present twice fo	nayment for trained that our all ation of exception the same ship	Agency could be utilized in allowing the insportation. I reviewed the case and lowances system could not, without the ional circumstances, reimburse the employed pment of goods, despite the hardship in not id requested insurance on his goods with	e 25X1A
cannot i Therefo	hich they had now insure the ore. I discussed ted that he would	never taken out. Nevertheless, the Agency safe handling and transportation of the goods d the matter with DD/S. Ild review the case and request that it be	• 25X1A
grounds 5X1A	ed to the Board of extraordina	d of Review for possible payment on the ary circumstances. 25X1A who then contacted	25X1A
will hr	ief the Chief,	who is traveling to next week nployee that the case is being submitted to	k,
who wil	ard of Review fo	or consideration.	,
who wil	ard of Review fo	or Consideration.	

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SEGRET .

Next 10 Page(s) In Document Exempt

28 MAR 1963

MEMORANDUM FOR:	DATA		
SUBJECT:	Coordination	of Insurance	and Other

- 1. In accordance with our recent discussion relative to the 3 December 1962 DDS memorandum concerning this subject. I have marshaled the facts bearing on the following three aspects of the present GEHA life insurance program:
 - (a) The group life insurance plans presently being offered through GEHA.
 - (b) Omaha's 15 November 1956 letter to GEHA relating generally to risks of an extra-hazardous nature and specifically maintaining that jet operations or extra-hazardous flights were excluded by the GEHA group contracts.

Death Benefits Problems

- (c) Renegotiation of the group life policies presently in force to reduce the number of exclusions, particularly with respect to the face amount as opposed to the accidental death and dismemberment amounts.
- 2. A comparison of the significant provisions of the three group life policies presently obtainable through GEHA is attached at Tab A. The comparison does not include the standard provisions of the policies which are generally required by D. C. law and are substantially the same. Rather, its purpose is to point up the major differences between the policies. Note that UBLIC has issued two separate policies to GEHA, one covering contract employees and another covering all members of GEHA. Contract employees are only eligible for GEHA membership on approval of the Board of Directors. As you well know, the WAEPA policy does not draw any such distinction. Further, (Tab Al), announcing the group life insurance plan for GEHA Contract Personnel, states "The agreement with the underwriter stipulates that the insured persons will

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25X1 'standard risks' whose assigned duties are not significantly more hazardous than those of staff personnel." A detailed review of the policy reveals no such stipulation.

- Omaha's 15 November 1956 letter to GEHA, copy of which is attached at Tab B, is apparently an attempt at clarification of the coverage of hazardous nature risks afforded by the group policy without significant reference to the policy itself. I say without significant reference because Supplementary Provision No. 3. which now appears as the last sentence in General Provision No. 3 and which is noted in the letter as excluding extra-hazardous operations on a continuing basis, excludes coverage for "the death of any protected person who is a member of the military or naval service of this or any other country, resulting from an act of war, whether declared or undeclared." Obviously, this provision does not exclude coverage for deaths resulting from extra-hazardous operations as such. Further, it does not apply to civilian personnel. It only excludes coverage for death of military personnel resulting from an act of war, and given these circumstances, whether or not the deceased was engaged in extra-hazardous operations is immaterial.
- 4. Lacking a significant reference to the contract between the parties, of what value is Omaha's letter from a strict legal viewpoint? Certainly the contract is the best evidence of the intent of the parties and further, in the event of an ambiguity in an insurance policy, the universal rule of law is that such ambiguity is construed against the insurer. Here, the UBLIC policy expressly provides for coverage of all members of GEHA. It doesn't distinguish as to duties of a hazardous nature or as to certain types of employees. Very simply, the question is: "Is the individual a member of GEHA?" If so, it clearly appears that he is covered regardless of the hazardous nature of his duties or the fact that he may be a contract employee. I fail to perceive any ambiguity on this score and can only conclude that the letter is of little, if any, value from a legal point of view.

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5. With this in mind, let us accept Omaha's letter at face value and consider the company's contention that:

"Our agreement was entered into with the definite understanding that we were to cover normal hazards of the Intelligence business, accepting an occasional hazardous risk by a full-time employee, and an operator entering into this extra-hazardous situation only on a very occasional basis." (Presumably, the words "Our agreement" refer to the GEHA group policy).

Omaha's statement in this respect seems to conflict with the GEHA Board of Director's position, reported in the General Counsel's n emorandum of 11 June 1956 at Tab C, that extra-hazardous duties had not been contemplated at the formulation of the GEHA program and that in negotiations with UBLIC the company had not been put on notice that such groups engaged in extra-hazardous missions might come under the coverage of the program. On the basis of this position, the Board resolved on 5 May 1956 that "the Officers of GEHA not approve applications of personnel of any project, other than true Staff Employees and Staff Agents, for insurance of any kind which GEHA administers." See Tab D. This position of the Board also conflicts with the statement of the Deputy General Counsel (Tab E), who participated in the negotiations and review of the contract provisions. indicating that UBLIC was given to understand that there might be unusual circumstances which would encompass individuals in extrahazardous-duty situations.

- 6. Having considered UBLIC's contention of its understanding with respect to coverage of hazardous-duty risks, we should also consider the Agency's intent in this respect at the time it entered into the contract. Following are in my opinion the key factors evidencing the Agency's intent:
 - (a) The CIA Career Service Board decided on 10 March 1953 that hazardous-duty risks should be covered by insurance, if possible, rather than by incentive or hazardous-duty pay, and that an insurance study should be instituted to determine whether or not it was possible for the Agency to enlarge its insurance program for the benefit of employees in the various categories. (Tab F). An insurance study was necessary because Agency personnel were in need of assistance in obtaining commercial insurance due to security requirements and to underwriting rules which placed a ceiling on the

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amount of coverage for CIA employees, particularly those engaged in the performance of hazardous duties. Also, the amount of WAEPA coverage available was limited in amount and by the overseas requirement.

- (b) Accordingly, an Insurance Task Force was established and its final report recommended that all Agency Staff Employees, and Staff Agents, be given the opportunity to secure group term life insurance. (Tab G).
- (c) Based on the recommendations of the Insurance Task Force, GEHA contracted for the UBLIC policy.

 of 29 July 1954 (Tab H), announcing the UBLIC life insurance plan, provides that the insurance "may be purchased by members of GEHA who are Staff Employees, Staff Agents, or Contract Employees, or who are civilian or military personnel detailed to the Agency..."

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While the final report of the Insurance Task Force does not mention contract employees in its recommendations, we must not lose sight of the fact that the Career Service Board's purpose in recommending the institution of this task force was to determine the feasibility of enlarging the insurance program for the benefit of "employees in the various categories," and to study the means of covering hazardousduty risks by insurance, if possible, rather than by hazardous-duty pay. This purpose together with the fact that without excluding hazardous-duty risks, expressly provided for coverage of GEHA members who are "Staff Employees, Staff Agents, or Contract Employees," leads to the conclusion that the Agency intended to have these personnel eligible for coverage regardless of their possible performance of extra-hazardous duties.

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7. The final aspect of the present GEHA life insurance program we discussed was the renegotiation of the group-life policies presently in force to reduce the number of exclusions. The only life insurance exclusion per se is the provision in the GEHA policy excluding coverage for death, resulting from an act of war, of any protected person who is a member of the military or naval service of this or any other country. Actually, this policy is more favorable in this respect than either the GEHA Contract Employees policy or the WAEPA policy since coverage under the Contract Employees policy terminates on the date the protected person enters the armed forces on full-time

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active duty and coverage under the WAEPA contract terminates on entry of an insured member into the armed forces of any country at war.

- 8. Insofar as the accidental death benefit is concerned, the GEHA Contract Employee's policy does not provide for this coverage. Both the GEHA policy and the WAEPA policy provide such coverage with exclusions for loss:
 - (a) by bacterial infection, except pyogenic infections, caused wholly by injury.
 - (b) by medical or surgical treatment except when made necessary solely by injury.
 - (c) resulting from suicide or any attempt thereat, while same or insane, or
 - (d) resulting from injury sustained as the result of or while participating in aeronautics, aviation, air travel, or Air Transportation except as a passenger, the term "passenger" being understood to exclude pilot, co-pilot, and all other members of the crew.

In addition to these four exclusions, the GEHA policy also excludes coverage for accidental death:

- (a) due to any kind of disease, or
- (b) after any premium has been waived or any payment made to or for the protected person under the Total and Fermanent Disability provision of the policy, or
- (c) for injury sustained as an act of war, declared or undeclared, while the protected person is a member of the military or naval service of this or any other country.

The latter two exclusions are not necessary in the WALPA policy because this policy does not contain a waiver of premium benefit in the event of total and permanent disability and because the WALPA coverage terminates on entry of the individual into the armed forces of any country at war.

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- 9. With respect to the disease exclusion, the general holding is that if death or disability is caused by a disease or physical condition which was not the result of any bodily infirmity or disease in existence at the time of the accident, but which was itself caused by the accidental means producing a bodily injury, the death or disability will not fall within a policy exception from liability for disease or other specified physical condition, and that the insurer is liable on the policy, the disease or infirmity being an effect of the accident. and the death or disability attributable not to the disease or infirmity but to the accident alone. The view taken is that these provisions excluding or limiting liability resulting from disease or bodily infirmity apply only to such as existed prior to the accident or were contracted subsequently to and independently of the accident. See 29A. Am. Jur., Insurance, \$ 1214. An example of a case where this clause would exclude coverage, is where an accidental injury. aggravates a pre-existing disease resulting in death of the individual due to the disease. 45 C.J.S., Insurance, \$ 776c. Under these circumstances. UBLIC would probably be entitled to deny liability for the accidental death benefit, whereas WAEPA probably would not depending upon the controlling state law.
- 10. In conclusion, the foregoing sets forth what I believe are the salient facts bearing on the aspects of the GEHA life insurance program we discussed.

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Attachments a/s

OGC:EFM:ibm (26 Mar 63)

Distribution:

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a - Subject - Insurance

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Next 5 Page(s) In Document Exempt

OGC 63-0070(a)

1 April 1963

MEMORANDUM FOR: Chief, Budget Division

SUBJECT:

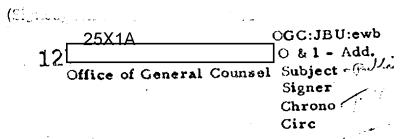
Agency Responsibility for Compliance with PL 87-579, "Depository Library Act of 1962"

- 1. You have requested our opinion and comments with respect to the Agency's responsibilities under the Depository Library Act of 1962. You have asked what kind of materials are subject to the Act, the number of copies which must be furnished, and what organization of Government is chargeable for printing and other costs.
- The depository library system is a long-established coeperative program between the Federal Covernment and designated major libraries throughout the United States, under which certain classes of Covernment publications are supplied free of cost to those libraries for the purpose of making such publications more readily accessible to the American public. The system is administered by the Office of the Superintendent of Documents. The new Act was latended primarily to cure two defects in the system as it had developed before 1962. The most critical problem was the need for additional epositories. Under the new Act, the maximum possible total of such libraries was raised from 720 to 1, 114. This latter figure includes * substantial number of Government libraries as well as the usual lastitutional depositories designated in the past. At the time of Passage of the Act, only 594 out of the possible 720 depository lioraries had been designated as such. The present figure can be estimated at about 1,000 libraries. This number, of course, is tubject to continual change as new libraries are designated.

- 3. The second major problem was that for the most part non-GPO-printed publications were unavailable to the depositories on the same basis as GPO publications. The Government Printing Office, originally designed to produce the printed materials needed by Congress, was later expanded to accommodate the printing requirements of all branches of Government. For a number of years, however, it has been physically impossible for GPO to meet these requirements. Certain departments and agencies of Government, therefore, have been authorized to establish subsidiary printing plants to produce certain of their necessary printed materials. In 1962 there were 352 such printing plants in the U.S. and throughout the world. Less than one-half of the Government printing is produced by GPO.
- A. For several years librarians throughout the United States have been contending that the necessary division of Government publications into GPO-printed and non-GPO-printed publications has placed an arbitrary limitation on the availability of a substantial number of Government publications through the depository library system. Some time ago the American Library Association, with the cooperation of the Librarian of Congress, established within the Library of Congress a documents expeditor for the express purpose of obtaining for the subscriber libraries copies of non-GPO-printed Government publications not available through the regular depository system. The legislative history of the 1962 Act cites the development of this documents expeditor arrangement as justification of the contention that certain non-GPO publications are of the type desired by, and, therefore, should be made available to, depository libraries.
 - 5. The new Act charges each component of Government with the responsibility of furnishing to the Superintendent of Documents a list of publications issued during the previous month obtained from sources other than the Government Printing Office. The Superintendant of Documents in turn is charged with the responsibility of maintaining a classified list of Government publications, containing annotation of contents and listed-by-item identification numbers, to include both GPO and non-GPO publications for gratis distribution to designated depository libraries in accordance with regulations issued by him.

The Government component is specifically authorized to exclude from its monthly list those publications (1) required for official use only, (2) required for strictly administrative or operational purposes which have no public interest or educational value, and (3) classified for measons of national security. Section 5, paragraph 2, of the new Act requires each department or agency to bear the cost of printing any publications selected for the Superintendent of Documents list. The legislative history of the Act suggests that the cost of shipping such publications to the Superintendent of Documents would also be borne by the printing department or agency.

- 6. For your information, section 7 of the new Act would, upon certification of the need by the DCI, make the Agency library a depository library for the receipt of all Government publications falling under the Act.
- 7. Since each depository library may select from the list provided by the Superintendent of Documents, the number of copies needed to support the system would fluctuate. The Act specifically charges the Superintendent of Documents with the responsibility of keeping the various components of Government currently informed as to the number of copies of their publications required for distribution to the depository libraries.
- 8. You have specifically requested an interpretation of section 5 of the Act, which excludes so-called "cooperative publications" which "must necessarily be sold in order to be self-sustaining. According to the legislative history of the Act, cooperative publications are those which the librarian recognizes would not be undertaken unless sold to the public. The price usually covers the cost of preparation, as well as printing; the publications are intended to be "self-sustaining." Such publications are usually the joint effort of a Government organization and a non-Government organization or agency. It is doubtful that publications other than those under the aegis of the Librarian of Congress would qualify as cooperative publications. (See Library of Congress Trust Funds Board Act of 1925, as amended. 2 U.S.C.A. 154.)
- 9. If we can be of any further assistance in interpreting this legislation, please feel free to call upon us.



cc: AD/CR

OGC 63-0808(a)

2 APR 1963

MEMORANDUM FOR: Chief, Operations and Liaison
Finance Division

SUBJECT:

Applicability of Greater Metropolitan .

Area HHE Delivery and Pick-Up Rates

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- (a) whether the full charges for delivery and pick-up of household effects in connection with PCS overseas assignments are properly charged to the Agency regardless of the location of the employee's abode, and
- (b) whether or not this is a matter for purely administrative discretion.
- 2. Your memorandum relates that for a number of years storage contracts between CIA and commercial storage companies have reflected a rate, for HHE storage shipments, limited to pickup or delivery from or to points within the Greater Metropolitan Area (commercial zone) of Washington, D. C. A higher ICC rate applies for points outside this zone and, as in $oxedsymbol{\square}$ where the employee resides outside the zone, the policy followed by the Finance Division has been to charge the employee with the excess, i.e., the difference between the higher rate and the commercial zone rate. However, since our headquarters are now outside the District, approximately nine miles from the commercial zone zero nillestone and three miles inside the western boundary of the zone, the use of this zone sometimes works an inequity on our employees. Thus, I understand an employee living in Vienna, Virginia, approximately seven miles from the headquarters building, is outside the commercial zone whereas employees residing in such areas as Beltsville, Clinton, and Fort Belvoir are within the zone although approximately twenty miles from the headquarters building.

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3. I have discussed this matter withof vour office and, at his suggestion, with Chief.	25X1A
Passenger Movement Branch, Transportation Division, Office of Logistics. I understand from these discussions that the commercial zone, with its zero milestone at the White House, was adopted by	
the Agency when its headquarters were in the District. I further understand that the zone is used as a matter of administrative con-	
venience, because its rates and geographic boundaries have been worked out in detail by the ICC, and as a means of conforming with	FOIAB5
the practice of other Government agencies.	OGC

5. The only applicable regulation which has been prescribed is which authorizes shipment of effects:

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"When storage at Government expense is authorized from permanent duty post to nearest adequate storage facility and thence to any subsequent permanent duty posts."

This regulation therefore contemplates storage shipments between the permanent duty post and the nearest adequate storage facility. Since the nearest adequate storage facility is not at issue here, the question resolves itself into a determination of the limits of the employee's duty post.

6. Section 1.3 SGTR provides that the limits of the duty post or station:

"will be the corporate limits of the city or town in which the officer or employee is stationed, but if not stationed in an incorporated city or town, the official station is the reservation, station, or

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established area, or, in the case of large reservations, the established subdivision thereof having definite boundaries within which the designated post of duty is located."

Since the Agency headquarters are not located within the corporate limits of a city or town, it appears from this section that the duty post, for purposes of HHE storage shipments of employees stationed at headquarters, should be the "established area." However, the Agency has not specifically prescribed an established area since moving to Langley. Rather, it has continued to use the Washington, D. C. commercial zone. In effect, therefore, the commercial zone has been administratively adopted as the established area for headquarters.

- 7. In view of the Agency's move to Virginia, this continued use of the commercial zone has limited basis in fact and sometimes results in inequities to our employees. These factors militate in favor of the Agency prescribing an established area with the head-quarters building at its hub. Such an area should include places of abode, located a reasonable distance from the headquarters building, from which our employees commute on a daily basis. What is a reasonable distance should be administratively determined by taking into consideration the various factors involved.
- 8. Therefore, in answer to the questions posed in your memorandum, the full charges for HHE storage shipments in connection with PCS overseas assignments are not properly chargeable to the Agency regardless of the location of the employee's abode, and this is not a matter for purely administrative discretion. Rather, such charges are only allowable when a headquarters employee resides within the limits of his duty post.
- 9. As requested, the copy of the Interstate Commerce Commission Notice, dated November 1, 1961, is returned herewith.

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	Office	of Ge	eneral	Counsel	

Attachment

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OGC 63- (0719(a)

3 April 1963

MEMORANDUM FOR:	SSA-DD/S 25X1A
ATTENTION:	
SUBJECT:	Computation of Employee's Overseas Tour for Home Leave Eligibility and Accrual

l. You have asked our opinion as to the correct date to be used in computing the beginning of an employee's overseas tour for the purpose of determining home leave eligibility and accrual.

Purposes

2. A discussion of home leave necessarily includes two completely separate concepts: the first is the date upon which an employee overseas becomes eligible for home leave; the second is the computation of creditable service abroad for accrual of home leave. Taking the second concept first, home leave begins to accrue from the date of an employee's initial overseas assignment, from the date of entrance on duty in the case of an employee recruited abroad, or from the date of arrival at a post abroad following a PCS assignment in the United States, Puerto Rico, or a possession of the United States. Such accrual continues even if the employee returns to the U. S. on leave, consultation, or detail so long as he has not been assigned officially to a position in the United States, Puerto Rico, or a possession of the United States. Thus, an employee who departs a post for the purpose of taking a new PCS assignment in the United States ceases to accrue creditable service abroad for home leave purposes on the date of departure from the post overseas. If, on the other hand, an employee has been assigned laterally from one overseas post to another, even the period of home leave in the United States can be used to determine creditability.

3. The date upon which an employee becomes eligible for home leave requires the completion of a period of continuous service abroad. This service begins upon arrival at the post abroad and continues until arrival at a U. S. port or border. It begins again upon departure from the United States or border for an overseas PCS post. Thus, an employee who reports overseas for duty on 3 April 1963 will become eligible for home leave after 2 April 1965. Any period in the U. S., however, extends this eligibility date.

	Office	of	General	Counsel	
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1963 VIRGINIA INCOME TAX ESTIMATES FOR NONRESIDENTS

1. The Tax Commissioner for Virginia has telegraphed the Department of Defense as follows:

"Federal employees who live in the states of Maryland, West Virginia, Kentucky, or North Carolina, or the District of Columbia, and commute on a daily basis to their place of employment in Virginia and have signed certificates of nonresidence in Virginia are not required to file Virginia state declarations of estimated income tax during taxable year 1963 provided they have no income from sources in Virginia except their wages."

In view of this official advice, in the opinion of the General Counsel of CIA, employees who meet the conditions prescribed in the Commissioner's telegram need not file a Virginia nonresident estimate for 1963. General Counsel is of the opinion also that in furnishing the information maintained in the Agency Personnel Emergency and Locator records, employees who do not reside in Virginia have furnished the certificates of nonresidence in Virginia.

25X1A

2. Paragraph 3c of states that Virginia nonresidents

must file a declaration of and pay an estimated tax for 1963. In view

of the above, that instruction no longer applies.

Next 13 Page(s) In Document Exempt

OGC 63-1047(a)

7 MAY 1963

MEMORANDUM FOR: Executive Director

SUBJECT:

Involuntary Separation Allowance

25X1A 1. This is by way of comments on the memorandum by

of 12 April, in response to that of yours of 5 March,
proposing the establishment of an involuntary separation allowance.

proposed that the separation allowance would be paid in a single payment but that "at the request of the employee" it could be made in two payments; one in the calendar year of separation, the second in the succeeding year. The purpose, of course, is to set up the allowance payments in such a way that the separated employee would suffer the least possible tax bite. I believe the provision that the employee may elect to receive his allowance in two payments, rather than one, defeats the purpose. Since the employee acquires, in the year of separation, the right to receive the total sum that year, the allowance would be income to him for that year. The tax objective could be accomplished, of course, by removing the employee's option, The Foreign Service Act provides for selection out benefits for FSO's 4, 5, 6, and 7 and provides further for payment in three equal installments on the first day of January following the officer's retirement with a proviso that in special cases the Secretary may, in his discretion, accelerate -- mobine the installments. It is believed that this formula for payment, since it is also included in our proposed early retirement legislation, might be the better provision. Certainly it satisfies the objective as to taxes since the option in effect rests with the Government.

3. also proposes that the separation allowance be reduced by any lump-sum leave payment to which the individual may be entitled. It is our understanding that the Bureau of the Budget, informally at least, has indicated a preference for this

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feature. It seems quite likely that the provision would result in the general practice of allowing separated employees to first use their accumulated leave, and we understand the Bureau of the Budget agrees that this practice would develop. I believe there is no requirement in law that the offset be made. Further, if as anticipated, the offset does result in the practice of permitting separated employees to first use their accumulated leave, the result will be to deny to the Agency for that much more time the availability of that employee's slot on the T/O and generally defeat the purposes of the lump-sum act. No offset is made in the case of the Foreign Service involuntary separation allowance. In view of these considerations, perhaps the Agency also should not require the offset.

- paper proposes also that the Civil Service annuities be offset against the separation allowance. In view of the Comptroller General's advice, by letter of 2 August 1962, that 701 compensation is free of dual compensation and dual employment restrictions, it would seem that we are not required to make this offset. The 701 concept, however, was that the allowance would cease when the individual became eligible for an optional retirement annuity. If the proposed separation compensation is based on the theory that it is in fact earned, there would seem to be no basis to require withholding or cessation of the payments geared to eligibility for optional retirement annuity. On the other hand, we are free to determine our own concept and could follow the old 701 pattern as a legal matter.
- 5. It is noted that any career employee whose employment is involuntarily terminated after five or more years of service with the Agency could be paid a separation allowance. It may be noted that under the Foreign Service system only FSO's in classes 4 through 7 are eligible since classes above that would be entitled to an immediate annuity and the one class below that (class 8) is considered a probationary appointment and, consequently, no allowances are authorized. There could well be a question of the Agency ability to justify separation compensation for any career employee since, as it now stands, the term career employee apparently encompasses all grades and all categories, including wage board employees. Further, the present thinking concerning eligibility for the Agency early retirement, when his enacted, would limit that benefit to employees of certain categories and certain prescribed experience.

- 6. We also have some difficulty with the wording of the policy statement to the effect that the DCI may authorize an involuntary separation allowance. The question is raised that if we are going to set forth a policy, shouldn't it be clear whether or not the allowance will be paid or whether it is a discretionary matter in selected cases? It is not clear from the statement of policy which is intended.
- 7. In view of the fact that the previous 701 compensation was discussed with certain congressional committees, careful consideration should be given as to whether or not this in effect would obligate us to raise an expanded program with the same committees. Please let us know if we can be of any further assistance.

25X1A

Deputy General Counsel

cc: DD/S
D/Personnel

OGC:JSW:mks

OGC:RHL:cdk:ewb (6 May 63)

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7 May 1963

MEMORANDUM FO	OR:		J•	• :
SUBJECT:	Memorandum :	25X1A re -	· Travel Expens	ies
		Sale .		
SUMMARY				
From the facts strictly liable for tra usual in Government legal authority is lac- invoke some relief m	accounting. On the	dvance is both to other hand, it would see	h legal and since precise m proper to	25X1A
l. After fruitle the GAO Opinion Section said that the assumption advanced to them is because to specifics, Mr. If for the rule beyond the told him all the source proposition, and he said the had no idea what other the affirmed his belief in graph 2 of your memoration.	on of strict liability asic in Government Friend admitted he is implications of 5 is I had checked in it they should have ner sources could sin the correctness of the strict in the correctness.	who answered y of employee financing. We knew of no act U.S.C.A. 838 trying to run of answered the hed light on the stateme	my inquiry, s for funds hen queried tual authority s, 839. I down this question. his point.	
2. The basic printerpowers executive age ances to employees. Whenot mileage allowances, argued that no other Codvances for domestic travances has based partly on that is, the advance in car	they did include so e section empowers who is the section of the s	or diem ormilaced to me per diem. s agencies to gile our paymethe manner of	were Mr. Friend grant ad- ent to Mr. payment,	25X1A
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3. Section 838 goes on to state "any sums so advanced and not used for allowable travel expenses shall be recoverable by set-off of salary due, retirement... from the person to whom advanced.... " 5 U.S.C.A. 839 provides as follows:

"Except as otherwise permitted by sections 835-842 of this title or by the laws relating to military personnel, only actual and necessary traveling expenses shall be allowed to any person holding employment or appointment under the United States."

25X1A

The compelling conclusion is that the Agency is without power to pay loss unless it resulted from facts peculiar to CIA. It could be argued that section 838 does not apply to an advance justified by the Agency's special missi on.

4. However, section 839 has language which would seem to cover instances other than mileage allowances. A similar statute was involved in 37 Comp. Gen. 344 (1957). In that case the question was whether a unlisted man was "any person" indebted to the United States within the meaning of 5 U.S.C.A. 82. 5 U.S.C.A. 82 provides that no compensation may be paid to any person who is in arrears to the U. S., and it is similar in scope and purpose to 5 U.S.C.A. 838. In the cited opinion the employee (enlisted) failed to account for petty cash given to him for minor purchases. The language in 37 Comp. Gen. 344 at 346 and 347 suggests that loss or embezzlement gives rise to liability and that the question of fault would be immaterial. It is hard to see how a different case. Of course, all of these principle would control in authorities relate to the availability of a remedy for the Government and in a sense assume the liability.

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5. In addition to the general principles mentioned above, signed a request for funds (see Tab i) with a clause as follows:

"I agree that I will fully account for this advance by submission of vouchers and refund of any unexpended balance to the reporting point stated and by the due date checked below. In the event of my failure to so account and refund any unexpended balance. I authorize deduction from my salary to effect settlement."

6. While CIA might not be entitled to levy such a precondition on payment of travel expenses for official business, it would seem that such a precondition would be proper for an advance. This is because CIA is under no duty to make the advance in cash. On the matter of notice is certainly chargeable with constructive notice because he signed a paper empowering his agent to accept money on the Agency's conditions.

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7. However legalistically proper or consistent with "general theory" a denial in ______ case might be, the result is harsh. The basis of the result lacks that degree of legal certainty I would like to have when requiring an employee to repay Government funds. Thesefore, perhaps we could use 31 U.S.C.A. 82a-1. I believe while not a disbursing agent, could qualify as an "other accountable officer or agent" within the meaning of this Code section (emphasis added). Realizing that my judgment in this matter is probably immaterial. I quote you the applicable language of the

Code for your examination and judgment:

25X1A

"The General Accounting Office is authorized, after consideration of the pertinent findings and if in concurrence with the determinations and recommendations of the head of the department or independent establishment concerned, to relieve any disbursing or other accountible officer or agent . . . of any such department or independent establishment of the Government charged with responsibility on account of physical loss or deficiency of Government funds . . . in his charge, or to authorize the reimbursement, from any appropriation or fund available for purposes of the activity in which the loss or deficiency occurred, of amounts paid subsequent to August 1, 1947, by or on behalf of the officer or agent in restitution of the loss or deficiency, if the head of the department or independent establishment determines (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties. or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and

3

(2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. This section shall be applicable only to the actual physical loss or deficiency of Government funds, vouchers, records checks, securities, or papers, and shall not include deficiencies in the accounts of such officers or agents resulting from illegal or erroneous payments."

Would you like this matter further researched?

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OGC: DDS: ewb
Orig - Subject Accounting - Bd. of Review
Signer
/Chrono

OGC 63-1307

7 May 1963

MEMORANDUM FOR: Deputy Director (Plans)

SUBJECT:

Prosecution of Employees for Misuse of Agency Funds

25X1A

2. Attached is the paper we forwarded to General Carter as Deputy Director in which he approved dropping the prosecution, and in paragraph 4 we state the DD/P's position as a conclusion. It would seem that a detailed analysis of the policy and security aspects is required and can best be prepared by DD/P, but let us know if we can help.

25X1A

3. I know that all concerned agree with the desirability of prosecuting _____ but to refresh your recollection there was another consideration that caused some hesitation, which was that inevitably in the course of a trial some revelation would be made of the nature of CIA's expenditures in _____ not the purposes and recipients but an indication that sizeable amounts were passed. I do not believe this in itself is considered controlling by DD/P.

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Attachment:

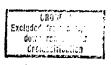
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LAWRENCE R. HOUSTON General Counsel

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Next 4 Page(s) In Document Exempt

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Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

9 MAY 1963

MEMORANDUM FOR: Mr. Lansdale

SUBJECT:

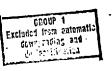
25X1A

DOD Industrial Security Procedures
Pertaining to Security Clearance on

- 1. Nonexecutive employees of an industrial contractor, who are United States citizens and who require access to information classified no higher than confidential, may be cleared by the contractor alone. Armed Forces Industrial Security Regulation 2-203e(2). The management of the contractor may clear such employees "on a determination that the individual's employment records are in order as to United States citizenship and that there is no information known to the contractor which indicates" that clearance is not "clearly consistent with the interest of national security." Industrial Security Manual for Safeguarding Classified Information par. 18a (4). The contractor may not revoke a clearance once he has granted it. If a contractor uncovers derogatory information in the course of clearing an individual United States citizen for access to confidential information, the DOD machinery for clearances comes in to play and the Industrial Personnel Security Review Regulation becomes relevant.
- 2. This Regulation was issued as a DOD directive in 1955 and it established a system for clearing contractors and their employees consisting of the following organizational elements:
 - (a) The Office of Industrial Personnel Security Review.
 - (b) The Industrial Personnel Security Screening Board,
 - (c) The Industrial Personnel Security Hearing Board (Field Boards).
 - (d) The Industrial Personnel Security Review Board (Central Boards).
- 3. Under the procedures specified under the regulation, cases in which derogatory information is uncovered with reference to an employee of a contractor are forwarded to the Director of the Office.

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SECRET



of Industrial Personnel Security Review by the military department concerned. The complete file, consisting of all available relevant information, a recommendation in the case and the reasons therefor, are transmitted.

- 4. After checking the file for completeness, the Director forwards all cases to the Screening Board for appropriate action. It appears from the Regulation that the Screening Board is composed of one member, military or civilian, from each military department. That Board reviews each case to determine whether a clearance should be granted or continued, or further processing should be given to the case. For a decision favorable to the employee, all three members of the Screening Board must concur (Review Reg., par. 17(h)). The directive provides that the determination by the Screening Board will be made in executive session; therefore, no security or legal advisor may be present. If the Board ultimately does not decide that a clearance shall be granted or continued in effect, it is required to prepare a Statement of Reasons. This Statement is forwarded by the Director to the employee.
- 5. On his submission of a detailed written answer, under oath or affirmation, to the Statement of Reasons, the employee is afforded an opportunity to request a hearing before a Hearing Board. at which he may appear in person and be represented by counsel or a representative of his own choosing. A quorum-panel of the Hearing Board may consist of any one civilian member who is a qualified attorney, or of any three members, one from each military department, of whom at least one shall be a civilian and at least one shall be a qualified attorney. The hearing proceeding begins by introducing into the records the Statement of Reasons and the answers thereto. Provision is made for the presentation of evidence by witnesses, documents, and sworn interrogatories. The right of crossexamination is allowed, as limited by section 4 of Executive Order 10865, pertaining to confidential informants and the national security. The Hearing Board reaches a conclusion on the questions presented to it and forwards its report to the Central Board.
- 6. This latter Board consists of one member, military or civilian, from each military department. The Regulation provides that determination of the Central Board shall be final subject only to reversal by the Secretary of Defense; or reconsideration at the request of the Director, the Secretary of the Department concerned,

or for other good cause. But, before making a final decision, there is provision for a tentative decision by the Board to allow both parties to present their positions based exclusively on the Hearing Record.

7. When these tentative decision proceedings have concluded. the Central Board may reach a final determination (subject only to the provisions for reversal or reconsideration set forth above) in cases in which the applicant's right to cross-examination has not been involved. In cases where the exceptions to the right of crossexamination have been invoked, and the Central Board concludes that access is not warranted, the Director must forward the case to the Secretary of Defense for determination.

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Next 4 Page(s) In Document Exempt

CONFIDENTIAL CGC 63-1360

13 MAY 1963

MEMORANDUM FOR: 1	Deputy Director (Support)	
SUBJECT:	Representation Allowance for Professional Field Recruiters	•
subject as above, propose now made available to P \$100 per year be increased memorandu our recruitment needs a	memorandum of 6 May 1963 to you. ses that the representation allowance ersonnel recruiters in the amount of sed to \$300 per year. I understand from and conversations with Personnel that re extensive. Further, the Agency remplicated somewhat by security factors additures are necessary.	25X́́́£́∂IAB DGC
3. 25X1A	memorandum is forwarded herewith.	
	8/ Lamono D. Kara-1-	•
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cc: Compirollar w/o att	182	and years

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Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

OGC 63-0296/la

17 May 1963

MEMORANDUM FOR:	Comptroller	25X1A		
SUBJECT:	Shortage in Acco	unt of] Board	
	of Review Case	No. 196		
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• •				
25X1A1. A staff stud	ly on this matter h	as circulated in dr	aft and	•
has rece	orded our opinion:	that there is no leg	al basis	• :
for writeon. (See		orandum of 28 Febr	there-	25X1A
1963 to you, OGC 63-0 after discussed it with	zyola), same subj me. I helieve it a	onropriste for me		
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returned. In the case part of their duties to				•
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the officer's discharge				•
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circumstances. We have checked this position with the Comptroller General's office, which agrees. We have also checked with the staff of the House Judiciary Subcommittee which handles private bills for relief in Congress. They state that they know of no precedent for relief under these circumstances. It appears, therefore, that we are unable to suggest any basis for relieving _______ in regard to this loss.

25X1A

s/ Lawrence R. Heuston

LAWRENCE R. HOUSTON
General Counsel

Attachments 25X1A

Background on

cc: Ecard of Review 25/1A

background on

OGC subject-Accounting-Board of Review

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OGC:LRH:jeb

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OGC 63-1139(a)

23 MAY 1963

MEMORANDUM FOR: Chief, Support Staff, SOD

SUBJECT:

Employment of Retired Naval Officers

- 1. Your memorandum of 22 April 1963 requested our opinion with respect to the legality of employing two regular Naval officers, retired for longevity. You have set forth three possible employment situations, all involving service by these officers for Agency proprietaries. The question is whether any or all of these situations would violate dual-compensation and/or dual-office statutes.
- 2. If we assume hypothetically that any appointment of these Naval officers by the Agency in the capacities set forth in your memorandum would violate dual-compensation/office statutes, the question becomes whether employment in such capacities by an Agency proprietary would also be in violation of law.
- 3. The Agency has been concerned with this question over the years. There are certain corporate business proprietaries which have valid business functions of their own which in many respects are not treated as wholly-owned Government corporations. These viable business projects utilize employees hired by the Government and assigned to the proprietaries, as well as employees hired by it directly and compensated by funds of the proprietary corporation. Individuals hired directly by the proprietary may not be witting of the Government interest in the corporation. We would think it possible to say that where a direct-hire employee's duties are related solely to the company's business activities he is not holding an office with the United States Government; thus, even if he is a retired military officer, neither the dual-compensation nor dual-office statutes would apply. If, however, he is assigned by the Government to such a corporation as cover for his Agency activity, we would think that the nature of the relationship between the proprietary and

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the Government would become immaterial in determining his status with respect to dual compensation and dual office. Moreover, if, as in your example a, the individual has entered a business relationship with a wholly-owned Agency proprietary which has no outside commercial income, the existence of the proprietary per se does not protect him from application of dual-office/compensation statutes. If, as in your example b, the individual is using a bona fide commercial company for cover only and derives his full salary from the Agency, the same criteria should be applied as was used in example a. Finally, where the employee is retained by a bona fide commercial company and part of his time is devoted to its legitimate business purpose while the remainder is devoted to Agency matters, the pro-rated portion attributable to Agency activities would be subject to the standard dual-compensation/office tests.

- 4. You have set forth in each of the three examples the possibility of employment as consultants, independent contractors, or when-actually-employed employees. Assuming a relationship, as discussed above, which would bring into operation the issues of dual office and dual compensation, we understand your question to be could these retired Naval officers be employed on any basis?
- on the Agency's behalf concerning the questions of dual compensation and dual office. A 19 October 1951 Opinion held that services to the Agency by a regular officer, retired for longevity, as a consultant paid on a fee basis would not be considered the holding of a civilian office or position within the meaning of dual-compensation and dual-office statutes. The Comptroller General noted in this holding that the consultant was to serve in a purely advisory capacity on a rather infrequent basis. Furthermore, the Comptroller General required that compensation be paid strictly on a fee basis as distinguished from a time basis. Thus, the retired officer was paid a fee per consultation. The period of time required for each consultation would be immaterial.
- 6. On 5 July 1955 the Comptroller General issued an unpublished, classified Opinion which held that certain types of services required in the fulfillment of the unique functions of the

Agency, which cannot be economically and satisfactorily performed by regular Agency employees, may be performed on a contract basis for which a fee is paid without there arising an employeremployee relationship between the contractor and the Agency. If such contractor is a retired military officer, he may retain his retirement pay while at the same time collecting a fee for the services rendered to the Agency. The Agency's requirements may be precise and for a sole occasion, or they may be broad, contemplating an extended period. Since there would be no accurate method of putting a dollar value on the information or services to be obtained through the contract relationship, the fairest method of computing the fee may be upon an annual basis. The Comptroller General regarded such a fee as equivalent to the retainer fee paid an attorney in private oractice.

- 7. As to the character of employment, the Comptroller General quoted the following facts: the Agency exercises no control or supervision over the persons or the work of the contractor; it provides no office space, facilities, tools, or appliances; there are no prescribed hours of work; and the individual in his discretion carries out the work at such times and under such conditions as he deems expedient; further, in connection with the prosecution of the work he may utilize the sorvices of other persons as he sees fit; such persons may not be subject to the supervision of the Agency; thus, the individual is told what information the Agency desires and left to his own resources and devices to obtain that information. On these facts the Comptroller General concluded that the relationship of the individual to the Government was that of an independent contractor rather than an employee.
- 8. The Comptroller General was very specific in the case cited to limit the cases in which such persons would be considered independent contractors to those in which the Agency is purchasing a final product. The fee may not have reference to any particular service but must take in the whole range of possible future assignments. The time worked is left entirely to the discretion of the individual and does not in any way constitute the basis for payment, although the fee covers a period of actual or potential services for one year.
- 9. We would suggest in any case in which you desire to employ a retired service officer you contact this Office with the specific facts as to his relationship to the Government or its



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proprietaries. Because of the extremely intricate nature of the statutory law in this subject, opinions are best developed on a case-by-case basis. Therefore, if we can be of service as to the considered employment of the two Naval officers in question, please feel free to call upon us.

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Office of General Counsel

OGC:JBU:ewb
Orig & 1 - Addressee
Subject - Pay and Allowances/Dual Comp.
Signer
Chrono
Circ

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25X1A Next 12 Page(s) In Document Exempt

Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

CGC 63-1418(a)

4 JUN 1963

MEMORANDUM	FOR:	Chief.	Operations	and	Lisison	Branch,
	•	Finar	ice Division	,		

SUBJECT:

Interpretation of

REFERENCE:

9 May 1963 Memo From C/EE/SS to SSA-DD/S.

25X1A

25X1A

Subject: Financial Relief for

is intended to circumvent the harsh effect subparagraph II (shipment and storage of household effects) could have upon employees shipped overseas at a time when the old gross weight allowances were in effect, by excepting any such employee from application of the new net allowances upon return to the United States wherever they would subject him to a shipping weight limit lower than applicable to him at the time of departure from Headquarters. You have requested our review of a case in which the regulations applicable in August 1957 allowed shipment of 4,500 pounds gross and 16,000 pounds total shipped and stored. The employee in this instance, if the 1957 regulation is applied for the return shipment, would be subject to repayment of overweight of 1, 937 pounds minus 356 pounds unused, unaccompanied baggage allowance as applicable for a net overweight balance of 1, 381 pounds. If the regulation, effective I April 1961, were applied, the net overweight would be 2,431 pounds minus 556 pounds unused, unaccompanied baggage for a balance of 1, 925 pounds overweight. The difference in cost to the employee of these two computations is \$256.78. Chief, LE/55 has recommended financial relief in this amount in the memorandum for SSA-DD/s.

2. We would think the clear wording of the regulation allows only one exception to the application of the old regulation should such application favor the employee upon his return from an overseas assignment.

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The exception, i.e., the case in which the lower weight limit is occasioned by assignment to a post where Government furniture is proyided, would not be material in this particular fact situation, although the post to which the EE employee was assigned was apparently such a post. We believe, therefore, that the employee should be provided the relief requested by Chief, EE/SS and should only be required to reimburse the Agency the sum of \$362.37 for the overweight.

25X1A

Office of General Counsel

act: Ref memo OGC/JBU: ewb: cdk (3 Jun 63)

Distribution:

O&1 - Addressee

1 - Subj. Trans.

1 - JBU Signer

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l - Circ.

Next 3 Page(s) In Document Exempt

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OGC 63-1624

5 JUN 1963

MEMORANDUM FOR: Deputy Special Support Assistant to the Deputy Director (Support)

SUBJECT:

Proposed CIA Living Quarters Allowance

System

l. You have requested our advice as to the legal authority of the Agency to establish a living quarters allowance system under which, in some instances at least, the allowance would be in excess of those established by the Standardized Regulations (Government Civilians, Foreign Areas). The Standardized Regulations apply to the Agency.

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OGC

2. As you have indicated, although this Agency, as others, may furnish quarters for its people, in many cases our cover requirements are such that this approach is not available in any realistic and useful way.

FOIAB5

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3. I believe also that the allowances contemplated would not be income to the individual for purposes of Federal income taxes.

4. Your draft memorandum of 1 March is returned herewith.

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Machment (5 Jun 63)

Associate General Counsel

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OGC 63-0930(a)

11 June 1963

LEMORANDUM FOR: DC/W	H Support		
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subject: Reque	est for Reimbursement for Tran	sportation	
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			FOIAB5
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several months after the arr	· ·		25X1A
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be reimbursed by the Agency	for this shipment.	_	25X1A
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3. We are returning	your papers with this memorane	lum.	-
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	Office of General Counsel		
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CGC:JBU:ewb	444		
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OGC 63-1422(a)

25 June 1963

MEMORANDUM FOR: Director of Personnel

SUBJECT:

Pay of Consultants and Experts

REFERENCE:

Memo fr D/Pers to Deputy General Counsel.

dtd 3 May 1963, same subject as above

I. We have been examining this problem and have discussed it at various places. Most particularly we have discussed it with the Department of Defense since the statute involved also affects them. I have been informed by Mr. Norman Paul, Assistant Secretary of Defense for Manpower, that they very much desire to establish a rate in this field of \$100 a day and he is presently collecting specific FOIAB justification from the various services.

2. Your suggestion that we merely delete the reference to \$50 a day does pose a problem in the respect that

OGC

other hand would be left to go to the provisions of P. L. 600 which would give them a maximum rate of \$68.96 at present and \$74.16 in January of 1963. This particular point makes it even more necessary that we coordinate our approach most closely with DOD. This becomes even more pertinent since we are advised that informal discussion of this problem by DOD with the Bureau of the Budget was not entirely satisfactory in that the Eureau of the Budget stated they would prefer to look into this problem on a Government-wide basis and, consequently, would like to conduct some thorough studies. All of this, of course, could mean extended delay.

1-14 1-1 3. As a first step in working on this, it is requested that the office of Personnel pull together appropriate justification looking toward decussions with the Bureau of the Budget. I think we should have very specific examples of why we need relief from the \$50 a day and why we should be able to go up to \$100 a day. After this has been prepared I would propose that the Agency and DOD consult to determine the best strategy. I might add that Mr. Paul stated he was pleased to learn of our efforts in this field and he saw no reason why we could not work together on this.

25X1A

Deputy General Counsel

cc: Executive Director

OGC Subject - Pero. 5

OGC/JSW:mks

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OGC 63-1820(a)

25 June 1963

MEMORANDUM FOR: DC/SS/EE

SUBJECT:

Leave in United States and its Effect upon Field Tours of Duty

REFERENCE:

Your memo to OGC dtd 21 June 63, same subject

1. On 21 June 1963 you requested our opinion on whether time spent in the United States for any purpose would serve to lengthen the eligibility period before which an employee assigned overseas might utilize accrued home leave.

states that authorized leave with pay "regardless of where such leave is used" will not serve to extend the period of creditable service for home leave accrual. Over the period of the last eight months, this Office has had a number of conversations with representatives of the General Accounting Office with respect to home leave accrual and the eligibility period for utilizing home leave. From our most recent conversation, we have concluded that GAO favors the following position:

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- A. Time spent in the United States serves to lengthen the period of time before which the employee becomes eligible to utilize home leave. If such time spent in the U. S. is for TDY of less than four months' duration, the rule does not apply.
- B. Time spent in the United States on TDY or leave, if less than four months' duration, will not interrupt accrual of home leave.

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25X1A

2. We are requesting that the Director of Personnel review this informal opinion of the General Accounting Office in light of and are suggesting that the Handbook be modified accordingly.

3. It is hoped that this clarification of the present legal position in this rather confusing area will assist you in notifying well in advance personnel overseas who may otherwise rely upon some understandable misinterpretation of home leave accrual and eligibility rules.

25X1A
Office of General Counsel

cc: Director of Personnel
OGC:JBU:ewb(25 June 63)
Orig & 1 - Addressee
Subject Four 10
Signer
Chrono
Circ

J. 100.

	25X1A	•
MEMORANDUM FOR:		
(11		

SUBJECT:

Forced Resignations

- 1. In a memorandum filed on 21 June 1963 Judge Youngdahl, of the United States District Court for the District of Columbia, decided that in the case of Ernest Paroczay v. Luther M. Hodges the plaintiff was never legally separated from his position in the Department of Commerce. The sole issue in the case was whether the plaintiff's resignation of 17 February 1960 from the Department of Commerce was voluntary or involuntary. According to Judge Youngdahl, "if the resignation was voluntarily given, then plaintiff has no right to the reinstatement in government employment which he ceks in this law suit . . . if the resignation was involuntarily given, however, then plaintiff's separation from government employment constituted a discharge, and he would be entitled to certain procedural rights under the Veterans Preference Act . . . including the right to respond on the merits to certain charges made against him."

 (Emphasis mine.)
- 2. The basis for the plaintiff's complaint was that he was asked to resign from his position with the Department of Commerce and, if he did not, charges would be brought against him. The basis for the request for resignation apparently was information indicating that the plaintiff had participated in homosexual activities prior to his being employed by the Department of Commerce. The plaintiff filed an affidavit with the Civil Service Commission and with the District Court for the District of Columbia which stated that a personnel officer of the Department of Commerce said to the plaintiff, "I you do not resign now, I will press charges immediately. As soon as I go into the front office I will start proceedings." The plaintiff in that affidavit said that he asked the personnel officer for a few days to think the matter over. The personnel officer replied, according to the affidavit. "No, once you leave this office I will start proceedings right now. Sign now." The plaintiff's statement

continued "without advice of counsel or an opportunity to discuss the matter with my wife or friends, and being apprehensive of being held up to public obloquy, I signed a 'form' resignation... on February 17, 1960, and effective March 18, 1960."

- 3. The case went up to the United States Court of Appeals, District of Columbia Circuit, and was decided by the Court on 28 December 1961 (297 F. 2d 439). That Court said in its opinion, "We hold only that in the form in which the variations of the facts were presented by affidavits to the Commission the resignation was not demonstrated to have been voluntary and that in the District Court there was presented a material issue of fact in that regard which made the case not appropriate for disposition by summary judgment." Up to this point the plaintiff's case was still a procedural one in the Courts, and while facts were presented in affidavit form concerning plaintiff's "resignation," there still had been no determination of what in fact happened concerning plaintiff's "resignation."
- 4. Plaintiff's next step was to go back to the Civil Service Commission. The Civil Service Commission decided that the "resignation" was voluntary. The plaintiff then went to the District Court in the present case, and the District Court under the guidance of the opinion of the Court of Appeals decided that as a matter of fact and law that plaintiff's "resignation" was not voluntary. Judge Youngdahl said, "the very posing of the choice under an admitted threat of immediate charges rendered the resignation involuntary. " He quoted language from two cases, Nakashima v. Acheson, 98 F. Supp. 11, 12 (S.D. Cal. 1951.), "a voluntary act is an act proceeding from one's own choice or full consent unimpelled by another's influence," and from Weisert v. Bramman, 216 S.W. 2d 430, 434 (1948), "it is . . . the general rule that a claim of duress cannot be sustained where there is full knowledge of the facts of the situation and ample time and opportunity (sic) for full and free investigation, deliberation and reflection. "Youngdahl continued, "There is no showing that the charges had to be filed immediately: they related to alleged incidents of a homosexual nature which had occurred some time before, including alleged incidents in his youth. There is no showing that national security was in any way involved, or that any other reason existed for immediate action. In fact, plaintiff's actual employment was not terminated until March 18, 1960, the date his resignation became effective." Judge Youngdahl concluded "that the need to make an immediate choice denied plaintiff the process which was due him under the circumstances. and that the resignation submitted on February 17, 1960, was involuntary."

- 5. The pertinent statute is Section 363 of Title 5 United States Code which gives permanent or indefinite preference eligible with certain procedural rights in case of discharge, suspension for more than 30 days, furlough without pay, and reduction in rank or compensation.
- 6. The Veterans Preference Act, of course, does not apply to personnel action involving employees of this Agency. However, I believe Judge Youngdahl's opinion is not to be confined to cases arising under the Veterans Preference Act. It is appropriate to this type of "resignation" if only to give an Agency employee a fair shake. It could be argued that a coerced resignation amounts to a discharge.

25X1A			

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1 - Subject New. 16

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OGC

Next 17 Page(s) In Document Exempt

OGC 63-1870

17 JUL 1963

MEMORANDUM FOR:	Deputy Director of Central Intelligence
SUBJECT:	25X1A - Recommendation for
	Settlement of Claim for Injury to Infant Daughter

i. This memorandum contains a recommendation submitted for Deputy Director of Central Intelligence approval. Such recommendation is contained in paragraph 3.

On 4 December 1961 the dependent daughter of Mr. an Agency employee stationed in medical care for treatment of burns sustained at the quarters. She was taken to the Agency medical facility at the station and was treated by an Agency physician. The physician treated the dependent for second degree burns of the tips of the third and fourth fingers of the left hand. After treatment, while the physician was bandaging the injured areas and attempting to cut the bandage, the patient evidently drew her left index finger up into the line of the scissors resulting in the severance of the tip of the Index finger. The dependent was taken to a hospital where the tip was sutured and a grafting procedure attempted. The grafting procedure, however, was unsuccessful (Attachment A). Upon receipt of the station inquiry for laformation concerning benefits to which the family might be entitled as a result of said injury, the Acting Chief. Beassits and Services Division, coordinated an investigation of the facts of the abovedescribed incident in cooperation with Chief. Clinical Division, Medical Staff, and a member of the Office of General Counsel. The various diagnostic and prognostic aspects of this care were investigated by the Medical Staff and were reviewed by the representatives of the aforementioned offices. According to the medical report, no further pathological developments resulting from this injury are expected. There will be some physical disability regarding the use of the finger under special circumstances such as, for example, playing a musical instrument. The major defect, however, is cosmetic in nature and it is uncertain as to whether or not a prosthesis will be desired now or in the future (Attachment B). 264

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Approved For Release 2005/07/12 : C**NES PE** 4-00709R000200050001-5

25X1A

3. (Attachment C) has submitted a claim for all future medical care necessary as a result of the injury. Mr. has also stated his intention to allow his child to decide in the future whether or not she would wish a cosmetic prosthesis.

the Agency or the United States Coverament as the Federal Tort Claims Act, which is the pertinent statute, does not contemplate injuries occurring outside the United States. Slowerer, an American court would have jurisdiction over an action against the Agency physician involved. Although it is extremely difficult to predict an award of damages in such a case, a review of the law of various United States purisdictions as well as conversations with local attorneys indicates that an action of this sort against the physician in such a jurisdiction would probably result in a verdict for the plaintiff in the amount of \$1,000.

| Would also have possible recourse to the supplication of a private bill in the Congress.

5. We do not think that this Agency should guarantee the payment of all future medical expenses in connection with this injury.

FOIAB5no believe, however, that a settlement is in order. The Agency installation involved was under Navy cover. By statute and regulation the Judge Advocate of the Military Department concerned may settle such claims against the United States in an amount not to exceed 25,000.

child was lajared under circumstances in which some degree of negligence by an agent of the Agency must be presumed. In view of the applicable law as well as the equities herein present, this Office has no legal objection to a full and final settlement in the amount of \$3,500, which represents the above-mentioned sum of \$5,000 loss the usual atterney's fee which otherwise would normally have to be paid in such a case.

7. As stated, the parents of the child have suffered no pecuniary less and have not put forward a personal claim for damages. As a safeguard for the child, the above-mentioned sum would be put to trust for the only benefit and use of the child. This Office will also take the steps necessary to insure that the settlement is final in all respects.

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out of this incident.	relating to any and all claims arising
out or time received	- T
25X1A	s/ Lawrence R. Houston
	LAWRENCE R. HOUSTON General Counsel
Attachments	
CONGURRENCES:	
25X1A	26 July 1963
Director of Personnel	Date
25X1A	31 July 1963
Chief, Medical Staff	Date
25X1A	2 Aug 1963
Deputy Director (Support)	
s/ Richard Helms	5 Aug 1963
Deputy Director (Plans)	Date
cified in DDCI memorandum t	raph 8 is approved, subject to condition to General Counsel dated 10 October 1963
Deputy Director of Central In	telligence Date
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Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5 OGC 63-1587(a)

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REFERENCE:	OGC 63-1587 Mei	morandum of 3	1 May 1963	
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5X1 05344		÷ .	· · · · · · · · · · · · · · · · · · ·	
1. [25X1A	Acting	Chief, Fiscal	Division	
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7, 1960, and B-14	7299, dated Octobe	r 19, 1961.	•	
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will infor		e may submit		25X1A
for the \$4.00.		•		./
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3. I adv	ised 25X1A I	would mark th	is case close	d
on OGC records.	, -		•	
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cc: 25X1A				
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	24 July 1963	
	MEMORANDUM FOR: 25X1A	
	SUBJECT: Delegation of Authority under	
	25X1A	
	1. This refers to my 21 May 1963 memorandum to you in which I advised I would check further into	25X1A
	insofar as it authorizes certain officials subordinate to the DCI to make awards in amounts up to and including \$1,000.	23A IA
		÷
	2. Section 302 of the Government Employees' Incentive Awards Act, 5 U.S.C.A. 2121, provides that the departmental awards program shall be carried out under such regulations as may be issued by the Civil Service Commission. Section 32.201 of the CSC regulations authorizes departmental plans and provides for "adequate delegation of authority and responsibility to bureaus, offices or field units to assure maximum compliance with the purposes of the Act."	
5X1A	3. It is therefore clear that the officials designated in may make awards in amounts up to and including \$1,000.	
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OGC 63-2195

26 JUL 1963

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25X1A	
Recorder, Honor and M	lerit
Awards Board	
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SUBJECT:

Tax Withholding on Agency Awards

\ <u>25X1A</u>	7
1. This pertains to your telephone inquiry to	_
and our subsequent phone conversation concerning the necessity	
for the Agency to withhold income tax from cash awards to	
employees under either the honor and merit awards program	
	25X1A

- 2. We believe that taxable awards to employees are subject to withholding. As you know, every employer making payment of wages is required to deduct and withhold upon such wages. Section 3401 of the 1954 Internal Revenue Code provides in part that the term "wages" means all remuneration for services performed by an employee for his employer with certain stated exemptions. None of the exemptions apply in this case.
 - 3. My research has not revealed any specific authority defining these awards as "wages" within Section 3401. However, suggestion awards are "wages" under the Social Security Act (S. S. T. 232, 1937-2 CB 456). In this connection, Commerce Clearing House in its publication Standard Federal Tax Reporter, a leading tax service, states "The general definition of 'wages' for income tax withholding is similar to that for social security tax purposes, so it would seem that the same results should be reached, and that income tax withholding applies to suggestion awards." I checked my findings with Mr. H. L. Lewis (Code 134, x-3292) of the Employment Tax Branch, IRS, who advises me that there are no specific rulings in point. He has no doubt, however, that the awards are within the Section 3401 definition of "wages."

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4. This question could probably be submitted to IRS for a formal ruling. If you would like to consider this, we would be pleased to discuss it with you.

25X1A
Office of General Counsel

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CIA INTERNAL USE ONLY

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26 July 1963

MEMORANDUM FOR THE RECORD

SUBJECT:

Renovation of the Director's Suite

REFERENCE: Action Memorandum A-273, Office of the Director 18 July 1963

1. I discussed the attached memorandum with this morning with respect to the Agency's authority to deal directly with a private contractor for the renovation and refurbishment of offices at Headquarters Building. He stated that where GSA desires it may redelegate to an individual agency the responsibility for the design and execution of renovations and refurbishment of that agency's buildings and grounds. The agency then may take appropriate action, including agotiating with a contractor without open bids if security requires for the required renovation. Under these circumstances at this Agency, the appropriate office in the Office of Logistics is charged with negotiating and contracting with the private firm in the name of the Agency.

2. Since apparently the Office of Logistics has the particular case well in hand, they will probably enter into a contract with after receiving concurrence in its terms from as our representative.

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25X1A

26 July 1963

MEMORANDUM	FOR	THE	RECORD
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SUBJECT: Home Leave Prior to Completion of 24-Month Tour

REFERENCE: Memorandum for SSA-DD/S dated 26 July, same subject

25X1A	25X1A
1. asked me to come into his office on	
22 July to read a Clandestine Services	
11 July 1963 on home leave, a thermofax of which is attached. The	
day prior to the issuance of this notice I had sent a draft support	
bulletin to the DD/S, which, my understanding is, will be going out	
to the field soon, clearly prohibiting, as does the Overseas Differential	s
and Allowances Act, the taking of home leave prior to the completion of	
14 months' continuous service outside the United States. The CSN.	
however, states that, generally speaking, while it is Agency policy to	
require completion of 24 months of continuous service by all employees	
including those under Foreign Service cover, "operational necessity.	
hardship, or compassionate circumstances" may overrule this requirement.	•

2. We have been struggling with the concept of what constitutes 24 months' continuous service since December 1962. The draft support bulletin reflects our negotiations with a representative of the General Accounting Office and is about as lenient as is conceivable under PL 86-707. In writing the draft support bulletin, I tried to pick up as many of the Foreign Service rules as possible, such as allowing the willing of time for eligibility to continue until arrival at a United States port or border. However, since PL 86-707 applies specifically to all agencies of Government, except in part the Department of State, we would have no legislative authority to ignore this statute and apply the 1961 amendment to the Foreign Service Act.

3. Yesterday of TSD called and today came in speak with me on the case of an employee in who as served abroad for 22 months. It would be in the best interests of the

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6. The above summary omits a great deal of the details involved in this problem. If you would care for a further discussion of this most complicated of all immigration cases, I will be happy to accommodate.

25X1A

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CIA INTERIAL ESE ONLY 63-1934(a)

5 AUG 1963

MEMORANDUM FOR: Office of Personnel

ATTENTION:

25X1A_____

SUBJECT:

Proposed Notice on 25th Hour Recreation

- 1. I refer to the several recent conversations and conferences on this subject and to the draft notice which you left with us, returned herewith.
- 2. It now develops that the subject of the use of appropriated funds for recreational facilities has been the subject of Agency consideration and legal advice on several prior occasions. See attached hereto copies of a memorandum of 16 November 1951 from Mr. Houston, entitled "Use of Appropriated Funds for Recreational Facilities," and a memorandum of 7 May 1959 to then Deputy Director of entitled "Support for Employee Organizations." -nese memoranda, and we believe they correctly state the law as of this date also, indicate that the expenditure of appropriated funds for recreation purposes, including salaries of employees to discharge duties in the field of recreation, is not authorized. In view of this and because the plan calls for one or more fulltime Agency employees on this activity, it is believed the initial problem will be that of the availability of nonappropriated funds. The notice therefore appears premature at this time.
- 3. Perhaps it would be well to abandon the concept of banding together, at least for administration, activities having no common bond. For example, basketball groups need not organize with the stamp and coin club. Organizational and administrative time thus could be reduced drastically and that which is required could be furnished by the employees,

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25X1A

- 4. As to activities which might require funds, in particular the ticket service, several sources could be explored. The most normal, and therefore probably the best, would be to invite one or more ticket agencies to consider the establishment of a facility for the Agency. Security problems would have to be met, but clearance of personnel furnished by such an agency should resolve them. Or CIA could furnish personnel, on a reimbursable basis. Other problems would remain, such as the legality of furnishing space, etc., but these also should be men to solution.
- 5. Perhaps the first practical step would be an Agency notice to the effect that there are indications of interest in expanding and modifying the present recreational set-up, a ticket service and other activities have been suggested, and employees are invited to confer among themselves looking to the establishment of such a facility. An employee group could be selected which would ascertain the extent of employee interest, the availability of funds, Agency interests and requirements (security) and commercial interest. Appropriate further steps would then follow. Office of Personnel and other Agency components could assist, as warranted. 25X1A

Attachmenter

Tab A - Draft Notice

Tab B - 16 Nov 1951 Memo w/att'd 1 Nov 1951 Memo

for Record by

Tab C - 7 May 1959 Memo

25X1A

OGC/RHL:cdk (5 Aug 63) Distribution:

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MEMORANDUM F	OR: Office of Com	ptroller/TAS	•		
ATTENTION:	. <u>25X1A</u>	•		•	
SUBJECT:	Educational Travel and Home Leave with Respect to Alaska and Hawaii				
and home leave with Both subjects are	quired as to the rule ith respect to perso covered by the Ove ferent and complics	ns assigned to reeas Differential		25X1 <i>F</i>	
dependents turn is defir United State and the poss States," who is to me and the Dist on the date Allowances not a person therefore meaning worment of the B. Hom Differential purpose the persons who "outside the	cational travel is prof an employee in a ned by section 111(6); the Commonweal sessions of the United used in a geographean "the several strict of Columbia." of the enactment of Act. Thus a person in a foreign area shay not be authorized uld result if the two Overseas Differentiate leave is prescribes and Allowances Act. Annual and Sick Leap have completed 24; United States. Still another controls and States. Still another controls are described as a completed 24; United States. Still another controls are described as a control of the completed 24; United States. Still another controls are described as a control of the completed 24; United States. Still another controls are described as a control of the control of th	foreign area. A) as any area "sit lth of Puerto Rico ed States." The t phic sense, is def ates of the United Both the Overseas Diff n assigned in and travel expense d. (I am not sure areas had become ials and Allowance ed by a provision ct and does so by ave Act of 1951. months of continuentitled to leave of	foreign area in uated outside the , the Canal Zone, erm "United ined (section States of America were states erentials and is s for his dependent that a different e states after enact es Act.) of the Overseas amending for the It provides that ious service of absence for use		

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7 August 1963

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MEMORANDUM FOR THE RECORD

SUBJECT: Virginia Amendment of Divorce Law

Prior to 1962 one ground for divorce in Virginia was 20-91(9), as follows:

"On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for three years, and at the time of separation were each resident and domiciled in Virginia. Divorce on this ground shall not be granted where service of process is by publication."

h 1962 the same section was amended to read as follows:

"On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for three years. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground."

At all times section 20-97 has provided that no suit for divorce is mainminable unless one of the parties is domiciled in and is an actual bona fide
medident of the state for at least one year preceding the divorce. There is
some question on whether or not the amendment of 20-91(9) has abolished
als requirement. This is doubtful and probably the plaintiff in any divorce
which must be a bona fide resident for one year. Todd v. Todd, 202 Va.

133 is the only case arising under this section and has not been illustrative
this meaning. However, the implications for this Agency would seem to
the (1) that divorce on behalf of an alien resident in Virginia is possible on
founds of separation; (2) unlike the Maryland Code, which requires a
foliantary separation, Virginia would require only "living separate and apart";
and (3) the effect of the 1962 amendment is clearly to allow service by publiation in such a divorce proceeding.

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OGC 63-2425

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MEMORANDUM FOR: C	:/EE/SS			
SUBJECT:	iome Leave E	Eligibility .	25X1A	
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I. We have revie	ewed the docu	ments vou	submitted with	25X1A
teabace to rue nome feat	e eligibility o	of [20.20	
is presently serving over	rseas as a sta	aff employe	a in Drais.	25X1A
in the past there may hav	o been some	confusion :	aw to the affect and	n.
vouse regare enferontità of	expenditure of	of annual le	num in the trulead	·25X1A
oures, me aruit anboat	Bulletin attac	ched to won	r Thomatah	
of 17 July 1963, we belie	ve, accuratel	ly states th	e law.	
25X1A				•
shrond animalness es	has complete	ed 24 monti	as of continuous ser	rvice
servings as a bott of bold	er in the Unit	ad States.	lace unselaces tolar	
in the United States (see	example 3 of	the draft S	upport Bulletin), th	is
would make him eligible;	tor nome leav	e and hom	e leave travel.	
Apparently, if he is takin	g surface tra	nsportation	, therefore, he wil	ll be
eligible under the facts ye	on usve annu	itted.		•
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OGC 63-2349

1 4 AUG 1963

	MEMORANDUM FOR THE RECORD 25X1A
	5UBJECT: Recision of a Termination Order Under
5X1A	25X1A 1. Office of Personnel, called to ask if this Office had any legal objection to recision of a termination order under
	2. On 18 July 1962, the Subject of the termination order was notified that she had been declared "surplus" and that her services had been ordered terminated by the DCI under but that she would be retained in her position until she reached retirement age. She reaches this age in December, 1963, at which time she is scheduled for termination.
Common and the second s	3. Her Division has recently initiated a request that she be retained in employment because she is singularly capable of performing her job, because she is performing in a highly satisfactory manner, and because her work is essential to the Division. DD/P has approved this request and has notified Persoanel that it is in the interest of the Agency that her termination order be revoked. Thus, although the employee has not appealed her termination under the procedure specified in DD/P has reconsidered its original recommendation regarding Subject and has requested the original order in its application to Subject be revoked.
25X1A	4. As the decision to terminate is discretionary with the DCI. I advised that this Office would have no legal objection if the Director were to reverse the decision to terminate on the grounds that on further review the Agency's needs are best served by retention of Subject.
	CONFIDENTIAL 1 - Circ. 1 - Circ. CONFIDENTIAL SIGNED SIGNED SIGNED

15 August 1963

MEMORANDUM FOR THE RECORD

SUBJECT: Per Diem for Temporary Duty at Stations Subsequently
Made Permanent

- 1. We have on a number of occasions been asked by operating officials whether per diem may be allowed for duty at a post prior to the taking of home leave when the post will become the permanent duty post upon return from home leave. A 1951 Comptroller General opinion, 31 Comp. Gen. 439, is directly in point. In this case a State Department official was transferred from Colombo, Ceylon, to Washington on home leave orders and also directed to report at Washington for a period of consultation before proceeding to his home leave point. On expiration of his leave the order directed that the employee report to Washington for permanent duty. Per diem while in Washington was specifically authorized for a period not to exceed five working days.
- diem for temporary duty at a station which subsequently becomes an employee's new official station must administratively be disallowed. However, the State Department related facts which provide an exception to this rule. It said that irrespective of their next posts of assignment all employees of the Foreign Service ordered to the United States on home leave are directed to report to the Department for a period of consultation where they are interviewed by officers in the regional bureaus and area operations offices concerning problems peculiar to their last posts of assignment, as well as interviews in intelligence, budget, and other matters. The Department stated that the fact that a number of these employees would be entering on Departmental assignments after compilation of TDY and home leave has no direct bearing on the purposes of duties performed during this TDY.

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3. The Comptroller General stated the following:

"The case here involved may be distinguished from those in the decisions referred to, and others falling within the scope of the general rule, since under the administrative practice described in the paragraph quoted immediately above the employee's presence in Washington for consultative purposes is not related or incident to his assumption of permanent duty at that place upon completion of his statutory leave, it being evident that he would be required to report for temporary duty in Washington regardless of whether that city was to be his future permanent station or not." (emphasis added)

Therefore, TDY prior to the taking of home leave at Headquarters in cases in which employees are to be assigned to Washington after a period overseas may entitle such employees to per diem, provided such TDY is for the purpose of consultation and interview prior to permanent assignment on which it has no direct bearing.

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Signer

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23 August 1963

MEMORAN	4DUM FOR THE RECORD	25X1A
SUBJECT:	Leave Travel Expenses for Persons Assigned t and Application of Title 5, Section 7	o3b-3

1. The current version of Section 73b-3 is a codification of:

60 Stat. 806	(P.L. 600);
68 Stat. 1008	(P. L. 737);
72 Stat. 843	(P.L. 85-749);
72 Stat. 1274	(P.L. 35-858);
74 Stat. 327	(P.L. 86-587); and
75 Stat. 409	(P. L. 87-172).

Only the first two are pertinent to the question of allowability of leave travel expenses for such persons.

2. The first of the two Statutes (60 Stat. 806) provides as follows:

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"Sec. 7. Appropriations for the departments shall be available, in accordance with regulations prescribed by the President, for expenses of travel of new appointees, expenses of transportation of their immediate families and expenses of transportation of their household goods and personal effects from places of actual residence at time of appointment to places of employment outside continental United States, and for such expenses on return of employees from their posts of duty outside continental United States to the places of their actual residence at time of assignment to duty outside the United States:

Provided. That such expenses shall not be allowed new appointees unless and until the person selected for appointment shall agree in writing to remain in the Government service for the twelve months following his appointment, unless separated for reasons beyond his control. In case of a violation of such agreement any moneys expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States. This section shall not apply to appropriations for the Foreign Service, State Department."

3. The second of the two Statutes (68 Stat. 1008) provides as follows, in pertinent part:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Administrative Expenses Act of 1946 (60 Stat. 806; 5 U.S. C. 73b-3), as amended, is further amended by changing the period at the end of the first sentence to a colon and adding the following:

Provided further. That expenses of round trip travel of employees and transportation of immediate family but excluding household effects, from their posts of duty outside the continental United States to the places of actual residence at time of appointment or transfer to such overseas posts of duty, shall be allowed in the case of persons who have satisfactorily completed an agreed period of service overseas and are returning to their actual place of residence for the purpose of taking leave prior to serving another tour of duty at the same or some other overseas post, under a new written agreement entered into before departing from the overseas post...!"

This would mean that under 73b-3 new Ag	ency appointess,	if any, could
be authorized leave travel expenses from		after serving
there for an agreed period of time, but it	would have no app	lication with
respect to other than new appointees.	25X1	Α

4. However, Section 73b-1 specifically picks up the authorities of 73b-3 for application with respect to other than new appointees. Mr. Turton, of the GAO General Counsel's Office (Code 129 x-3623), confirms that 73b-1 is intended to make available to other than new appointees the leave travel expenses available to new appointees under 73b-3. See also the Explanation of Section 1(b) of the Senate Report on the bill. The Report is Senate Report No. 2495, at pages 3869 and 3873 of the U.S. Code Congressional Service, 81st Congress, Second Session, 1950.

25X1A R.N. F.

Associate General Counsel

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Approved For Release 2005/07/12 : CIA-RDP84-00709R000200050001-5

OGC 63-2433

28 AUG 1963

	K: Comptroller	
ATTENTION:	25X1A	
MBJECT:	Allowability of Travel Expenses for	養養
25X1A	Authorized Annual Leave With Respect 25X1A to Persons Assigned to and	
eference:	OGC Memorandum for Office of the Comp-	1
	troller, TAS, dated 5 August 1963, Subject:	
	Educational Travel and Home Leave with Respect to OGC 63-2267 25X1A	1
	20/1//	2
l. This is w	rith reference to OGC 63-2267, dated 5 August 1963,	K)
	nal Travel and Home Leave with Respect to 25X1A	
	efer also to our several conversations with Messrs.	Δ
drafts of this memor	nd to their advice and assistance on several earther	Ì
	4 and waits	
1 //		450
2. Reference	ced memorandum indicates that an employee assigned	(1)
Lo Reierenc	does not earn home leave. It was not addressed to	
to the question as to wi	does not earn home leave. It was not addressed to hether travel expenses for persons assigned to	
to the question as to will for trave	does not earn home leave. It was not addressed to thether travel expenses for persons assigned to el to a point elsewhere within the United States for authorized annual leave may be allowed.	
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	MWords	
	which have previously been used in statutory provisions and defined therein are presumed to have that same meaning in the statute subse-	
	quently e nacted" (82 Corpus Juris Secundum 316). The Foreign Service	
	Act defines the term to mean all areas not included in "the States and	- <u>1</u>
7 4 A	the District of Columbia" (22 U.S.C. 802(6), (7)). That provision of the Foreign Service Act was enacted prior to the acquisition of statehood	: 3pe
(1A	We are advised by a representative of the Office	
	of the Legal Adviser, Department of State, that the Department now interprets that definition to include Here also the	25X1A
	interpretation is proper under the rules of statutory construction. "So	
	also, where a statute is expressed in general terms and in words of	14MS
	the present tense it will be construed to apply not only to things and conditions existing at its passage, but will also be given a prospective	
	interpretation, by which it will apply to such as come into existence	
	the reafter" (82 Corpus Juris Secundum 319). Subparagraph (3)(A) therefore does not authorize the payment of travel expenses for leave purposes	25.
	for persons assigned to	25X1
	4. However, there is authority in travel law applicable to the	
	Governm ent generally for the payment of such expenses under certain	
	circumstances. Section 73b-3 of Title 5 of the United States Code authorizes such expenses with respect to new appointees, that is, persons	
	hired initially for duty outside the United States. Section 73b-1 in turn	
,	applies the authority of section 73b-3 to persons who are not new ap-	
;	5. The authority of 73b-3 requires, however, that the person be returning to the United States for leave "prior to serving another tour"	
(of duty at the same or another overseas post, under a new written agree-	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
1	ment entered into before departing from the overseas post." (For this	A control of the cont
1	Purpose, "overseas" includes 25X1A	Taylor State of the Control of the C
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that neither the original period of service overseas, nor the subsequent one, is required to be of any particular duration. The expenses are to be allowed "in the case of persons who have satisfactorily completed an agreed period of service overseas" (emphasis supplied).

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Associate General Counsel

cc: O-DD/S Deputy SSA-DD/8 O-DD/P O-Personnel O-Logistics Finance Division Fiscal Division

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OGC 63-2577

28 AUG 1963

NEW ORAMUUM FOR: Special Support Assistant to the Deputy Director (Support)

SUBJECT:

Home Leave

1. As you know, the Overseas Differentials and Allowances ict, enacted 6 September 196), for the first time made available to this Agency, as well as to the Government generally, a home leave entitlement. Prior to that time only Foreign Service (FS) personnel received bome leave not chargeable against annual leave. However, the home leave now available to this Agency and the Covernment differs from that available to the FS in that the latter may be granted to the to employee after 13 months' service and next be granted within It month s' service abroad. CIA home leave may not be granted until H months' service outside the United States. (For this purpose, the United States includes This change in law, together with the complications resulting from the fact that much of our service abroad is under cover of F6, has raised a number of questions concerning home leave and has resulted in recent support bulletins and CSNs, and actions based on them, which, it appears, have caused some confusion.

2. It is understood that in a number of posts, cover is endangered by the requirement that our personnel be granted home leave on a basis not applicable to the F5 personnel. I believe it would be legally proper therefore for the Agency to adopt the policy that Agency personnel serving abroad as integrees in the F5 may take home leave under the rules applicable to the F5, so long as they remain integrated. This would permit home leave after 13 months and return to the original or a new post outside the United States. It would also permit home leave at the end of a #C5 of 13 months outside the United States and PC5 to HC, provided the individual continues in an integrated status until the home leave has been utilized. If this policy is adopted, existing regulations, C5Ns and

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support bulletins thereupon should be modified accordingly.

- 3. Home leave for contract agents could be provided in their contracts.
- 4. It is understood that staff agents under nonofficial cover in some instances are granted home leave by their cover entities, or in accordance with the practice in the cover industry or field, for service of less than two years outside the United States. We see no legal objection to this, and indeed, it would be difficult to hold that in doing so the staff agent is doing other than living his cover. However, in those instances in which home leave is taken for cover purposes before 24 months have been served, it would not be proper to also grant the regular home leave.

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OGC 63-2533(a)

29 AUG 1963

REMORANDUM FOR:

Chief, Contract Personnel Division

SUBJECT:

Contract with Representatives of CIA

Scientific Advisory Board

This is with reference to your several recent conversations with me and the draft document which you sent us for approval on 13 August. As I understand, the desire is to set up the financial arrangements with the members of the CIA Scientific Advisory Board in such a way as to reduce to a minimum the accounting, bookkeeping and tax problems for them. To this end, it is sought to compensate the members on a per diem basis under the authority of section 303(a) of the National Security Act and to meet reasonable travel and living expenses. The draft, therefore, would provide for a stated amount for travel expenses, which amount is based on first-class travel costs from the homes of the individuals concerned. There would also be a flat amount for living expenses, modelled on the authority available for CIA employees under _______. There is no legal objection.

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/	Associate General Counsel

Draft Agreement 25X1A

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Approved For Release 2005/b7/12 : CIA-RDP84-00709R000200050001-5

OGC 63-2555(a)

1 1 SEP 1963

MEMORANDUM FOR: Chief, Benefits and Services Division,

Office of Personnel

SUBJECT:

Extension of Payroll Withholding to Agencywide Employee Programs

- 1. You have requested OGC comments on a proposed memorandum recommending that approval be given to the general principle to extend the payroll deduction facility to any Agency-wide employee program, such as the Agency's non-Government insurance program and Credit Union program.
- 2. The proposed memorandum points out that the Civil Service Commission has issued a memorandum dated May 22, 1963, announcing a program of voluntary withholding of employee organization dues. The authority for this withholding is found in Sections 5 and 6 of P. L. 37-394, September 26, 1961 which provide:
 - "Sec. 5. The head of each department is authorized to establish procedures under which each employee of such department is permitted to make allotments and assignments of amounts out of his compensation for such purpose as such department head deems appropriate.
 - "Sec. 6. (a) To the extent practicable in the public interest, the President shall coordinate the policies and procedures of the respective departments in the executive branch under this Act.
 - "(b) The President, with respect to the executive branch, and the head of the department concerned, with respect to the appropriate department outside the executive branch, shall prescribe and issue, or provide for the formulation and issuance of, such regulations as are necessary and appropriate to carry out the provisions, accomplish the purposes, and

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govern the administration, of this Act. Such regulations shall be issued on or before the ninetieth day following the date of enactment of this Act and shall become effective on the ninetieth day following the date of issuance.

- "(c) The head of each department in the executive branch is authorized to prescribe and issue such regulations (not inconsistent with the regulations of the President issued under subsection (b) of this section) as are necessary and appropriate to carry out the functions of such department head under this Act."
- 3. By Section 2(b) of Executive Order 19932, dated December 25, 1961, the President delegated to CSC his authority to perform the functions conferred upon him "by the provisions of Section 6 of P. L. 37-394 with respect to allotments and assignments authorized by Section 5 of that Act." CSC has implemented this delegation by promulgating regulations covering allotments and assignments of compensation from Federal employees. Section 25, 604 of these regulations provides for the following circumstances under which allotments are permitted:
 - "(a) Allotments may be authorized on a current basis under the following circumstances:
 - (1) When an employee is assigned to a post of duty outside the continental United States; or
 - (2) When an employee is working on an assignment away from his regular post of duty when the assignment is expected to continue for three months or more; or
 - (3) When an employee is serving as an officer or a member of a crew on a vessel under the control of the Government of the United States."
 - 4. Since Section 6(c) of P. L. 37,-304 provides that Agency regulations may not be inconsistent with Presidential regulations issued under Section 6(b), and the Agency proposal to extend the use of allotments would not be permitted under the CSC regulations promulgated pursuant to E. O. 19732, this proposal would not be authorized under P. L. 37-304.

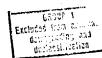
5. However, based on this same Law and Executive Order, GAO ruled on January 7, 1963 that CSC may promulgate regulations permitting employees to authorize payroll deductions for the purpose of paying their union dues. As you know, the President subsequently requested CSC to develop regulations for this purpose. Mr. Travis fills, Chief, Employee Rights and Compensation Section of CSC, advises me that the CSC regulations are being revised accordingly. Since these regulations are presently undergoing revision, it would be timely for the Agency to request that a provision be included to cover the proposal at hand. If you think this would be desirable, please let me know and we will pursue the matter further with the CSC General Counsel.

	 General	

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Approved for Release 2005/07/12: CIA-RDP84-00709R000200050001-5 OGC 63-2465b 1 a SEF 1963 MEMORANDUM FOR: Executive Director Claim for Injury to 25X1A SUBJECT: Infant Daughter 1. This is in response to your memorandum to this office of 16 August 1963, subject as above. 2. Government funds may be expended only pursuant to some statutory authority. This is true of CIA as of any other Govern-25X1A claim, being based on negligence, is 25X1A Normally recourse, if any, would ment Agency. The what is known as a tort claim. be under the Federal Tort Claims Act. However, the incident occurred outside the United States and the Tort Claims Act has no application outside the United States. This Agency has no specific authority to settle claims of this nature under these circum-Therefore, under normal circumstances any action would be against the individual who was negligent -- in this case the physician who was an employee of the Agency. In the alternative, the injured person might seek relief in the form of private legislation. If had tried to pursue either line of action, the Agency would have to step in to stop him because the information which would be 25X1A needed to support the claim would violate our operational security. 25X1A Since, therefore, we would have to block the normal legal remedies, it was incumbent on us to provide a 25X1A with not less than the same relief that he could have obtained under normal circumstances. In other words, our aim was to arrive at a settlement which would be 25X1A action against the negligent physician. We can justify making a not less than what financial settlement of this nature under our general authority covering Confidential Funds. 3. Withreference to question la, the fact that an Agency settlement is being substituted for a settlement from the doctor makes a quitchaim appropriate. Without such an instrument, Mr. would be free to sue the doctor notwithstanding payment 25X1A

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by the Agency. Under normal circumstances, the settlement with the doctor would similarly be made final either by quitclaim or court order.

4. With respect to question 1b, as mentioned above the proposal was intended not only to cover medical claims, as has requested, but also to compensate for other loss. A judgment by a court, and the proposal here, represent both an estimate of medical expenses and a compensation for the loss of the finger, for pain and suffering, for loss of future earnings, etc. With reference to the suggestion concerning BEC payments, BEC is a statutory formula set up to compensate employees for personal injuries sustained while in the performance of their duties; it has no application in the case of injuries to other persons or the general law of torts. It may be noted also that under the BEC formula an injury of this type would be compensable in the amount of 23 weeks' pay, a concept offering no guidelines for an injury to a child.

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5. With reference to question ic, the basis for recommending settlement was that because security would preclude seeking the relief available by means of a suit against the doctor, settlement by the Agency should conform to that which he could have had from the doctor. For this purpose, we researched a number of cases which, however, did not furnish a clearcut answer on a case of this sort, nor of course were they informative as to cases which are settled out of court. Since the questions involved are in the nature of those of a malaractice suit, we, after some inquiry, consulted with a Washington lawyer, expert in this field. It was his considered judgment that, based on the facts of this case as presented to him, could be expected to be compensated by a court in the approximate amount of \$5,000. Further, because the outcome of negligence cases is so unpredictable, it is a normal arrangement between a plaintiff and his lawyer that the lawyer is to receive no fee in the event the defendant wins and approximately one-third of the amount received in the event the plaintiff wins. This two-thirds we rounded off to \$3,500.

25X1/

- 6. With reference to inability to understand how the doctor cut off the child's finger without realizing it, states that there is no defense of the unfortunate event. The child did move her finger at the time the bandage was being trimmed but movement is a characteristic of children and safeguards should be provided. Under such circumstances, realization of the disaster is not made in sufficient time to stay the closure of the scissors. The recommended settlement assumes without attempting to prove that there is negligence.
 - 7. I believe question ld has been answered in the above paragraphs.

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25X1A Approved For Release 2005/07/12: CIA-RDP84-00709R000200050001- 8. With reference to question le, had advised, and agrees, that he expects the daughter will be able to type and perform other activities requiring considerable finger dexterity. The suggestion was that although her ability to play a musical instrument may be adversely affected, the physical disabilit will be minimal. advises also that a prosthetic device	FOIAB5
would have no functional use. In any event, the possible desire to use a prosthetic device is included within the concept of a lump-sum settlement.	
25X1A 9. In summation, it was and is our feeling that this office and the Agency should look at the case not merely with respect to specific request, but every effort should	25X1A
be made to be completely fair to and his daughter while properly serving the Agency's interests. Our recommendation of 17 July, and our considerations leading to that memorandum,	25X1A
were for that purpose.	

LAWRENCE R. HOUSTON General Counsel

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Approved For Release 2000 11/12: CIA-RDP84-00709R000200050001-5

OGC 63-2194(a)

17 SEP 1963

MEMORANDUM FOR: Deputy Comptroller

SUBJECT:

Monthly Vouchered Payroll for Certain Agency Officials Carrying Salaries in Excess of the GS-13 Level

- 1. Your 24 July 1963 memorandum requests the advice of this Mice on whether Agency employees, other than the Director and Deputy Director, whose salaries are at rates in excess of the GS-13 level may be paid by the same pay schedule used for Agency GS-grade analoyees. The latter are paid biweekly; the above Grade 18 officials are paid once a month. Your memorandum further indicates it would be a saving to the Agency and an administrative convenience to your Office to apply the biweekly schedule to the above GS-13 officials too.
- 2. Agency employees, including those whose salaries exceed that of the GS-13 grade, are paid under the authority of the CIA Act. Section 694(b) of the Federal Employees Pay Act of 1945, as amended, 1 U.S.C. \$ 944(b)(1959), prescribes that the basic pay period for all Government agency officers and employees, with specified exceptions not pertinent to this question, shall cover two administrative workweeks. Subdivision (d) of section 604, 5 U.S.C. \$ 944(c)(1953), provides a formula to be used whenever, for pay computation purposes affecting officers or employees in or under the Executive Branch, it is necessary to convert a basic annual rate to a basic biweekly, weekly, daily, or hourly rate. The Agency is therefore authorized under section 604(b) to pay these above GS-13 officials on a biweekly basis, and the section 604(d) formula is to be applied for this purpose.

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3. You have indicated also that conversion of these individuals to the two-week pay schedule would cause them to receive two weeks less pay in the year the conversion takes place (1963) than would otherwise be the case. Since this could lead to objections that the new pay schedule amounts to an unauthorized reduction in pay, it might be well to request DDCI approval of the new schedule. In this connection, you have noted that when the officials first went on the monthly payroll, they received two weeks extra pay that year.

s/ Laurence A. Lousian

LAW RENCE R. HOUSTON General Counsel

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OGC 63-2876

27 SEP 1963

MEMORANDUM FOR:

25X1A
Technical Accounting Staff

SUBJECT:

Club Funds

- I. I have explored the tax possibilities as a result of club funds being deposited in an interest-paying account. For the club funds not to be subject to income tax they would have to be deposited as funds from a tax-exempt organization. Upon the establishment of a tax-exempt association the club funds could be placed under the aegis of that association.
- 2. If you believe there is some merit to this suggestion. I believe it would be fruitful to consider the establishment of an overall CIA employees association. Club funds could be a part of the assets of that association. Such an association could have as its objective employee welfare which would include recreation, social clubs, and even grants of funds to needy members. There are at present several organizations under broad Agency spensorship which have these objectives. I suggest that we look into the possibilities of drawing all these together. I would be happy to discuss this with you and others having an interest.

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Assistant General Counsel

25X1A

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OGC 63-2588(a)

4 - OCT 1963

- EMORANDUM FOR:

TEROUGH:

Chief, Benefits and Services Division, Office of Personnel

SUBJECT:

Personal Liability of Horseback Riding Club Members

- 1. You have inquired concerning your personal liability as a horseback riding instructor in the riding club operated under the auspices of the Recreation Association, Office of Personnel. You point out that the very nature of this activity, i.e., association with horses, whose actions and conduct can be both erratic and unpredictable, suggest the possibility of some danger or risk of injury not only to the employee receiving the instruction but also to co-members of the riding club or to bystanders.
- 2. There is a doctrine of law known as assumption of risk which debars one who voluntarily assumes the risk of injury from a known danger, from recovering against another in negligence.
 This doctrine is applied in the field of sports. Smith v. Kelly, Inc., 275 F. 2nd 169 (D. C. Cir. 1960); Dougherty v. Tomkins Company, 240 F. 2nd 34 (D. C. Cir. 1957). It rests upon the consent of an individual to assume the risk of the obvious dangers inherent as a participator or spectator at a given sports event. Such consent may be found:
 - (a) By express agreement. Such agreements are unheld in general, except that they are usually not construed to cover the aggravated forms of negligence described as "wilful" or "gross."

- (b) By implication from the conduct of the parties. When one enters voluntarily into a situation involving obvious danger, he may be taken to assume the risk and to relieve another of responsibility. Such implied assumption of risk requires knowledge and appreciation of the risk and a voluntary choice to encounter it.

 Prosser, Torts \$ 55 (2d ed. 1955). For example, by participating in golf, a player assumes the ordinary risks in playing the game, and one of the ordinary risks in playing golf is being hit by a golf ball. Rogers, v. Allis-Chalmers Mfg. Go., 18 ALR 2nd 1363, 153 Ohio St 513, 92 NE 2d 677,
- 3. Knowledge of the risk is the watchword of assumption of risk. Ordinarily one will not be taken to assume any risk of conditions of activities of which he is ignorant. Further, he must not only know of the facts which create the danger but he must comprehend and appreciate the danger himself. If, because of age or lack of experience, he does not comprehend the risk involved he amount situation, he will not be taken to consent to assume it, but a minor will be taken to appreciate those risks with which one of his age, experience and intelligence should be familiar. Prosser, supra. Presumably, the minor-age members of the Recreation Association riding club would be held to appreciate the ordinary risks incident to horseback riding.
- 4. Under the assumption of risk doctrine, therefore, you would not be personally liable for an injury incident to the ordinary, known risk inherent as a participator or spectator at the club's horse-back riding activities. However, as an added safeguard, I advise that you obtain a signed statement from club members expressing their voluntary assumption of the risk. I suggest the following form for the statement:

"I am fully aware of the ordinary dangers incident to horseback riding and hereby agree to exempt the (Name of riding club), and any of its members, from liability for any injury incident to the ordinary risks inherent in horseback riding, which I may suffer while voluntarily engaging in the activities of the (Name of riding club."

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8 October 1963

MEMORANDUM FOR:	25X1A
SUBJECT:	Malamatica Tanana
20101 C.	Malpractice Insurance

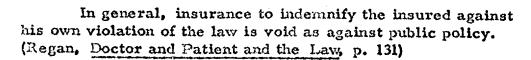
1. In response to the attached memorandum you are advised that no specific cases in point were found in the digests, texts, law reviews, or other publications.

2. In response to the question of coverage for doctors while engaged in their official duties, there is a strong possibility that this policy will apply. A military doctor performing in accordance with his orders is, in fact, usually authorized to by law.

In many states the statutes requiring a license or certificate for the practice of medicine and surgery expressly exempt from their operation certain classes of persons, and services rendered in particular cases. . . . Thus it is commonly provided that the statute shall not apply to any commissioned medical officer of the United States Army, Navy, or Marine service (70 CJS 830, 831).

These statutes vary considerably. For instance, the New York exemption is based on the person, i.e., an active duty officer. Thus a reserve officer is not covered (Haberlin v. Englehardt (1916), 157 NYS 359). On the other hand, a statute such as in Kansas exempts officers only in performance of their official duties (see dicta in State v. Gleason (1938), 79 P 2d 911). Under the latter type statute there could be no coverage for purely private practice.

- 3. Another possibility is to take the approach that a state may not prohibit or license the practice of medicine by military officers in performance of their official duties. Therefore, each doctor is in fact authorized to practice by state law because the state law has no application to him. Such a result has been reached with respect to drivers' licenses for mail truck operators on grounds that such a power would allow the state to set qualifications for federal employment. The validity of the insurance policy under question would depend on whether this constitutes "authorization to practice" under the state.
- 4. With respect to the question of private practice by these doctors and the coverage of the policy generally, the following quotations may be a guide:



Similar statements on unlicensed practice are made in Roady and Anderson, Professional Negligence, and 35 ALR 2d 455. However, no direct citation to cases support these statements:

As a matter of public policy or express policy provision there is no coverage with respect to liability arising from the unlicensed practice of medicine or dentistry. (Couch, Insurance, 44:371).

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- 5. The case most often cited is Betts v. Mass. Bonding (1917), 90 NJ Law 632, 101 A 257. This was an action by a dentist against his insurer. Although his policy covered acts of his assistants acting under his direction, the dentist was denied recovery on the following grounds: (1) his assistant could not have acted under lawful instructions because the latter was unlicensed; (2) the policy did not extend to acts "in violation of law or ordinance"; (3) the acts of the dentist's assistant constituted unlawful practice as defined by state law and recovery would violate public policy. It was immaterial that the assistant was licensed to practice in another state, or that failure to obtain a license was not the proximate cause of injury.
- 6. Glesby v. Hartford Accident (1935) 6 Cal. App. 2d 89, was an action for indemnification. One clause exempted claims arising from an "unlawful act". Held: An accident caused by practice of an unlicensed assistant is not within the terms of the policy and recovery would be contrary to public policy.
- 7. Even where a valid insurance policy exists, it is possible that it may be limited to acts of private practice. In one case, a doctor was denied recovery against his insurance company for an accident resulting from his performance of duties as a coroner (193 SW Ed 343).
- 8. Where an optometrist injured his patient's eye in removing foreign matter, an act not covered by his license, it was held that the liability did not arise out of his profession. A professional policy is limited to acts which are properly within the license to practice the profession (Kime V. Actna Casualty (1940) 66 Ohio App. 277).



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9. Conclusions: (1) The policies under question do not cover private practice. (2) The policies might apply to acts within the doctor's official military duties, but the risk that they do not is a needless one. (3) Most states provide an exemption for military doctors and the particular state law should be consulted. (4) Most states will license the doctors under their state law with examination and on the basis of reciprocity.

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Office of General Counsel

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CGC 63-2997

-9 00T 1963

MEMORANDUM FOR:

Director of Personnel

SUBJECT:

Per Diem Compensation for Consultants

1. We have undertaken to compare the per diem rate of compensation payable to Agency consultants with that authorized for individuals similarly employed by the Department of Defense. Our conclusion is that Agency consultants are afforded less favorable treatment, compensation-wise, than their confreres in DoD. Further, it would appear that the existing imbalance may not be cured by administrative action.

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Parenthetically, it might be noted that the authority given to the Secretary of Defense by this provision was repealed by the Act of August 10, 1956 and is now codified in section 173 of Title 10, Armed Forces. Although section 173 continues in effect the \$50 limitation, the Secretary has available other statutory authorities which enable him to exceed it. Specifically, these are section 55a of Title 5, as implemented by the DoD appropriations.

3. Section 55a provides: "The head of any department, when authorized in an appropriation or other Act, may procure the temporary (not in excess of one year) or intermittent services of experts or consultants..., by contract, and in such cases such services shall be without regard to the civil-service and classification laws), but as to agencies subject to the Classification Act of 1949 at rates not in excess of the per diem equivalent of the highest rate payable under such Act (unless other rates are specifically provided in the appropriation or other law)." (Parentheses in text.)

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- 4. The DoD Appropriation Act for FY 63 provided: "During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, ... are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), under regulations prescribed by the Secretary of Defense ..." (section 501 of P.L. 37-577).
- 5. The section 501 wording, which has appeared in every DoD appropriation since FY 60, and which does not of itself limit the amount of compensation, is continued in the appropriation for FY 64. In contrast, the Defense appropriations for the period FY 49 to FY 59, in authorizing the use of the section 55a hiring authority, have specifically provided "at rates for individuals not in excess of \$50 per day." The absence of this limitation since FY 60 has, by the reference in section 55a to "the highest rate payable" under the Classification Act, enabled the Secretary of Defense to adopt pay increases effected by amendments to that Act. While the Comptroller General has ruled (29 Comp. Gen. 267, 269) that "highest rate" limits consultant compensation to the maximum provided for a GS-15, under the GS Schedule presently in effect payments of \$63.96 per day is permissible for DoD personnel. However, while not subject to the Classification Act, since the Agency lacks an appropriation as such the reference to "other Act" or "other law" contained in section 55a, would if it were applicable, continue unchanged the \$50 rate provided for in section 405 of Title 50. And to the extent that there is presently an \$13.96 monetary gap between the respective rates, this will widen to \$24.16 when, pursuant to Schedule II of the Classification Act Amendments of 1962 the GS-15 maximum is increased to \$74.16 per day.

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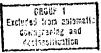
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Assistant General Counsel

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OGC 63-3013

9 October 1963

HEMORANDUM FOR THE RECORD

SUBJECT: Home Service Transfer Allowance

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1.	and I agree that the following para-
graph would be appropriate for	inclusion in a forthcoming Support Bulle-
tin, intended to clarify the artic	le in the Support Bulletin of August 1905
concerning home service transfe	er allowance:

- Allowance (TLA) is based upon the date of the employee's entrance on duty (ECD) at his domestic post of assignment and not his arrival in the area. In other words, even though an employee may be in the Washington area in a leave status, the eligibility period for his TLA cannot be established until he has reported for duty. Merely telephoning or 'dropping in' at Headquarters is not sufficient action to establish an 'entrance on duty' date. The employee's status must officially change from a travel or leave to a duty status and such change must be officially documented by the appropriate administrative officer. A subsequent return to an authorized leave status would not change the officially established EOD date."
- 2. The foregoing I believe relaxes somewhat the EOD requirements prescribed in our memorandum of 27 June 1960 (OGC 66-8986), subject: Temporary Lodging Portion, Home Service Transfer Allowance, " and would serve to implement Colonel White's memorandum of 13 September 1963 entitled "Home Service Transfer Allowance."

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	Associate	General Counsel
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Chief, Finance Division		

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OGC 63-2346(a)

9 601 753.

MEMORANDUM FOR: Assistant Director for ELINT

SUBJECT:

Use of Research Engineer

- l. You have requested our opinion as to whether or not, in view of the provisions controlling "conflicts of interest," the Office of ELINT may contract for the services of a highly-qualified electrical engineer to provide technical assistance in specialized areas of the electronics intolligence field.
- 2. As we understand the proposal, OEL would contract with a firm, the terms of which would provide that the latter would for a fixed contract price furnish the services of a specifically designated individual to perform full-time analytic and engineering research studies. We understand further that the responsibilities of the firm would be delineated in the contract; that the individual would remain its employee, receiving such emoluments as may be agreed without recourse to the Agency; and that the engineer will have no supervisory responsibilities with respect to Agency employees. In the light of these circumstances, we agree that the arrangement contemplated would not give rise to a conflict of interest.
- 3. Whether or not the revised conflict-of-interest statutes, which became effective 21 January 1963, and now contained in Chapter 11 of Title 13 of the United States Code, are to be considered as proscribing the type of arrangement here, is to be determined, in the final analysis, on whether or not the research engineer is to be considered a Government employee, special or full-time. Here it appears since the contract will be with the firm to whom the Agency will look for performance, the individual himself will not have such a status.

Assistant General Counsel

Attachment -Sanders Associates Proposal

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Approved For Release 2005/07/12: CIA-RDP84-00709R000200050001-5

ll October 1963

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MEMORANDUM	FOR:	

SUBJECT:

Per Diem Compensation for Consultants

- 1. Subsequent to preparing our paper to D/Pers on consultant pay, I have learned that you had treated the subject in a memorandum to Echols, dated 25 June 1963. I note from paragraph 3 of your memorandum that the suggestion has been made that we join with DOD in an attempt to raise the rate to \$100 a day. I recommend against such a consolidation of effort, not only because being subject to the Classification Act, DOD's problem is in some respect different from ours, but also because in the long run having a limit specified could work to the Agency's disadvantage.
- 2. To the extent that Echol's memorandum to you of 3 May is accurate in quoting AEC as paying "over \$100 per day in certain cases," this is possible in view of the fact that its appropriation for FY 63 provided "... services authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a)." (Title III of P. L. 37-330). This language, plus exemption from the Classification Act, would afford a basis for a \$100 plus, per day rate. It seems to me we would be much better off to have the National Security Act amended to authorize the employment of consultants, period.

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CCC 63-2659a

14 October 1963

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	VEMORANDUM F	OR: Acting Chief, of Personne		Staff, Office	
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	REFERENCES:	(a) 30 Aug 63	ltr from	s to CIA, Attentio	: 16
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Office of General Counsel

	4. If the Office of Personnel believes instances may arise where a policy against resumption of payments would be desirable, it might be
25X1A	it to revise setting forth such a policy. It also might be
	advisable to consider a general clarification of as regards the
	been temporarily ineligible for them. This office will be happy to discuss this point further and to assist with any revision desired.
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MEMORANDUM FOR: Chief, Contract Personnel Division, Office of Personnel

SUBJECT:

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Taxability of Certain Quarters Allowances

REFERENCE:

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OGC memo 63-2224 dtd 2 Aug 1963 for C/CPD/OP

- 1. This refers to my 2 August 1963 memorandum to you advising that a quarters allowance for career agents in excess of the amount authorized by the standardized regulations would constitute taxable income to the career agents in the amount of the excess.
- 2. OGC has now obtained an Internal Revenue Service ruling dated 2 October 1963 that certain amounts paid for "Special Living Quarters" and certain other amounts paid in excess of the prescribed maximum for quarters allowance under Title 2 of the Overseas Differential and Allowances Act are excludable from gross income of the recipient employee. However, amounts actually paid by the employee in excess of the allowances are not deductible by him.

3. This ruling find quarters within the my 2 August 1963 mem allowance would not coan employee is required.	e maximum allo corandum, the matitute taxable	income to the recip	the case in 25X cess quarters ient. Also, where
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Secretary to the second

21 October 1963

MEMORANDUM FOR: Mr. Warner

SUBJECT:

Per Diem Compensation for Consultants

- 1. In our memorandum of 9 October 1963 to Director of Personnel on the subject: per diem compensation for consultants, we stated that the consultant employment authority of the Secretary of Defense, appearing in section 303 of the National Security Act, as amended, had been repealed by the Act of August 10, 1956. You have questioned the validity of that statement in view of the section 303 wording as it appears in section 405 of 50 U.S.C.A. (1963 Supplement).
- 2. The Act of August 10, 1956, 70 A Stat. 1, consolidated and codified in title 10, Armed Forces, the various provisions of the law pertaining to Department of Defense, Army, Navy, Marine Corps, Air Force and National Guard, regardless of how they may have been classified theretofore. In the matter of the Secretary of Defense employing consultants, the Act, at page 3, reads as follows:
 - "(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.
 - "(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than \$50 for each day of service, as the Secretary determines.

"(c) Sections 231, 283, and 234 of title 18 do not apply to a person because of his service on a committee, or as a part-time adviser, under subsection (a), unless he performs an act which is unlawful under one of those sections and which relates to a matter directly involving a department or agency which he is advising or to a matter in which that department or agency is directly interested." (§ 173.)

Later on, in the Schedule of Laws Repealed, the Act further provides that the authority of the Secretary of Defense, as it appears in section 303 of the National Security Act of 1947, as amended, is rescinded. In this connection, see 70A Stat. 1, pages 676 and 679.

3. Thus, to the extent that section 405 of 50 U.S.C.A. (1963 Supplement) identifies the Secretary of Defense as being authorized to employ consultants along with the Director of Office of Defense Mobilization, the Director of Central Intelligence and the Executive Secretary of the National Security Council, the wording of that provision is wrong. For the correct version of section 405(a), the current version of section 303 of the National Security Act, as amended, may be found in section 405 of title 50, U.S.C. (1958 edition), the introductory language of which reads as follows:

"The Director of the Office of Civil and Defense Mobilization, the Director of Central Intelligence, and the National Security Council, acting through its Executive Secretary, are authorized to appoint "

4. In view of the above, our previous advice regarding an amendment being made to the National Security Act must and is hereby reaffirmed.

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	Assistant	General	Counsel	

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OGC 63-3158

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MEMORANDUM	FOR:			Office	of
•		National	Estimates	-	

SUBJECT:

Deductibility of Education Expenses

- 1. This memorandum is in response to your question regarding the possibility of deducting certain expenses incurred by you in the pursuit of an educational program. Under Internal Revenue Regulation 1.162-5 expenditures made for a taxpayer's education are deductible if the education is undertaken primarily for the purpose of:
 - (a) maintaining or improving skills required by the taxpayer in his employment or other trade or business or
 - (b) meeting the express requirements of a taxpayer's employer for the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his salary, status, or employment.

In terms of the regulation education includes research activities.

2. Under the regulation it is not necessary that the education be required by an employer. Whether educational expenses are deductible is a matter to be determined upon the basis of all the facts of each case. The interpretation of the test under (a) above is not clear. Apparently the Revenue Service considers it necessary to show that it is "customary" for other established members of the taxpayer's business to undertake such education. The tax court, however, has held that it is not "absolutely necessary that customariness be established," and it places emphasis upon the primary purpose of the education 31 T. C. 1014). In that case deduction was allowed for the purpose of maintaining and improving taxpayer's skills in his profession.

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OGC 63-3056(a)

20 OCT 1963

MEMORANDUM FOR:	25X1A ADP Machine Section
SUBJECT:	Dual Compensation and Dual Office-Holding Statutes
REFERENCE:	Memorandum for OGC from dtd 11 October 1963, re Violation of Federal Statutes

employee, stated that he intends to enter on leave-without-pay status for a period of approximately six months during which time he will attend college on a full-time basis. As stated in reference, it is his intention to apply for a part-time job at the National Institute of Health. The National Institute of Health has informed him that his job will be classified as temporary and that the hours of his work will be uncertain. According to the project upon which he will be working at NIH is expected to be finished by January 1964.

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2. The decision by the Comptroller General, dated 21 July 1957, 37 Comp. Gen. 64, held that part-time employees are subject to the statute of 10 May 1916, 5 USC 58, which prohibits the availability of appropriations for payment to any person receiving more than one salary when the combined amount exceeds \$2,000 per annum. A part-time employee is defined in this decision as an employee who is regularly employed on a prearranged schedule, whose hours or days of work are less than the prescribed hours or days of work for full-time employees in the same class. The Comptroller General further stated in this opinion that the fact that an employee is on leave-without-pay status while employed part time by another Government agency does not exempt him from the prohibition of the statute. In this decision, however, it was further held that intermittent employees are not affected by the prohibition of this statute. Based on the information given by it would seem that his job would fall within the

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category of intermittent employment and that the statute would not apply in his case.

3. The only other statute which would be applicable in this case would be the act of 31 July 1894, 5 USC 62, which refers to dual office. This act provides that:

No person who holds an office whose salary or annual compensation attached thereto which amounts to the sum of \$2,500 shall be appointed to or hold any office to which compensation is attached unless specifically authorized thereto by law.

It is a bit unclear as to whether or not this statute would apply in a case of this nature. One decision of the Comptroller General does state that part-time employment does not constitute the holding of an office to which compensation is attached within the meaning of the above statute. 23 Comp. Gen. 900 (1944). However, I have been informed by GAO that this decision is no longer considered as accurate on this point. In a later case, 36 Comp. Gen 655 (1957), it was held that an employee appointed to a temporary position, paid at an hourly rate for services rendered, and employed on an irregular hourly schedule cannot be regarded as holding an office within the dual office-holding prohibition in 5 USC 62. It would seem that ______ case would be directly in point with this decision and that therefore the statute would not apply.

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4. It would seem that neither statute would appl	y in
this case. However, due to the very nature of this case	and the
statutes themselves, this opinion can only be advisory i	n nature
It is our suggestion that should contact this	Office
once again when he is actually hired by NIH and a more	factual
determination can be made as to whether or not a statut	eie
violated. If it is then determined that a statute is in fac	·t
violated due to the classification of his job by NIH.	
could then separate from the Agency. Along this line,	t ia
also suggested that contact the Office of Per	aonnai
regarding his rehiring in the future if it becomes neces	some ton
him to separate.	sary for
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MEMORANDUM FOR: OGC

SUBJECT:

Outside Work by CIA Lawyers

- 1. I believe it desirable to prescribe some general guidelines for CIA lawyers, including CIA employees who are lawyers but are not members of this Office, in connection with outside legal work.
- 2. It is basic that Government employees may not utilize Government time to engage in outside work. Also, the legal requirements concerning conflicts of interest, as well as such requirements on members of the Bar, directly govern and limit the outside work which Government lawyers may engage in. The Department of Justice takes the position that because there are so many opportunities for embarrassing the Government or a particular agency, any private work by a lawyer working for the Federal Government should be approved by a General Counsel or other high official. Also, the very close and cooperative relationships which this Office has with IRS, INS and the Department of Justice raise special consideration concerning outside work by CIA lawyers.
- 3. In view of these factors, no private work in areas handled by the agencies named above should be undertaken by lawyers who work for CIA. In any other area, work should not be undertaken without prior approval of the General Counsel or the Deputy General Counsel.

LAWRENCE R. HOUSTON

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OGC 63-3377a

1 9 NOV 1963

MEMORANDUM FOR:	Chief, Contract Personnel Office of Personnel	Division,
•	25X1A	:
SUBJECT:		

l. You have requested our advice concerning request that his consultant contract be revised to conform to his employer's policy regarding disclosure and ownership of patents.

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- 2. As we understand the situation, by contract effective 6 September 1963, was engaged as a member of the DCI's Scientific Advisory Board for a fee of \$50.00 per day but, as a University employee, he is obligated to include in outside consultant arrangements a provision to the effect that the University has prior rights to any inventions conceived or developed by him during the period of his University employment.
- 3. The DCI's Scientific Advisory Board of 16 July 1963) was established to advise the Director on the adequacy of the Agency's research and development effort and to recommend changes in the program and organization as might be necessary to fulfill the Agency mission.
- 4. Generally speaking, in the absence of an express or implied agreement, an employer does not have exclusive rights to the inventions of his employee even though it can be found that the inventive power was incited by knowledge necessarily derived from his employment. And, in this respect, the rule for Government employees does not differ from that applicable to employees in private industry. Keeping in mind the purposes for which the Board was established, it is our opinion that the Agency would not have an interest in inventions ______ might conceive during the period of his Board membership. However, to the extent that his concern might be allayed by having his Agency contract reflect this situation, we suggest that it be modified to include a provision somewhat as follows:

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"It is unde to the United Sta this contract are University of Ca dated	tes Gover s subordin	nment unate to you	der the to ir obligat	erms of ions to t	he t
We hasten to add that present contract conta gested by the Universi plish the desired resu	ining a pa ity, we be	itent clau: lieve our	se simila suggestic	r to that	as sug-
5. In reaching that the Agency contrastatus is that of an inconsecution of Agency patent intership between the partipurposes of this quest	act specifi dependent d be consi rest, we h les as beli	cally pro contractoridered as ave elected	vides that or. While foreclosied to con	t in a te ing the questing the	legal echnical uestion relation-
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27 NOY 1009

MEMORANDUM FOR:	FE/BF	• •
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ATTENTION:		
SUBJECT:	Removal of Rug Incident to Shipping of	
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	25X1A	
REFERENCE:		
referenced above in v	as withheld concurrence on the dispatch view of That regulation able shipping expenses, those items of incurred in connection with the shipment	25X1/
whether the expense administrative deterministrative	f this regulation. The determination of is in connection with shipment is one for mination. The papers in connection with ingly returned herewith.	•
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MEMORANDUM FOR THE RECORD

SUBJECT: Overtime Pay

- 1. According to Mr. Mills, Overtime Section of the Civil Service Commission, the Central Intelligence Agency is exempt from the provisions of Civil Service regulations relating to overtime (See Civil Service Regulation 550. 101b(3)). According to Mr. Mills, this exemption also means that the Civil Service Commission believes that CIA is exempt from the Federal Employees Pay Act of 1945 and specifically its overtime provisions.
- 2. Mr. Mills said there was no question that the intent of Congress in passing the overtime provision of the Federal Employees Pay Act of 1945 was that Federal employees should be paid for overtime work performed where it had been clear that the agency expected the employee to work overtime to perform his tasks. I understood from Mr. Mills that in these cases the form of agency approval is relatively unimportant.

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Il December 1963

MEMORANDUM FOR: Mr. Houston

SUBJECT:

Suggestion

- 1. At present, much of the Agency's legal work appears to be done by outside counsel. The merits of such a system, as well as its necessity, are obvious. However, it would seem logical that a good deal of this work could be performed centrally. This is especially true of the preparation of contracts, drafting of corporate papers, examination of leases and other items. It seems possible that this could be done without an increase in personnel at OGC. An attorney here costs the Agency from \$3.50 to \$12.00 per hour on the average. Cutside counsel is considerably more expensive.
- 2. I suggest that a study of costs and activities by outside attorneys be commenced to determine whether or not substantial savings can be made without injury to efficiency. I believe that such activity would be in support of the recent Presidential policy of economy.
- 3. Secondly, I suggest that an inventory of all Agency legal assets be commenced in order to save money in the recruiting and clearing of attorneys. At present, the Office of Contacts, DODS, and possibly other Agency components maintain contacts with attorneys. Many of these contacts are not for the purpose of securing legal service. However, if lawyers with existing clearances can be used for legal support without endangering their operational usefulness, the savings to the Agency could be considerable. Lastly, an inventory of legal assets would create a central point at which projects and work could be allocated so that a compromise of one project would not endanger others.

4. Therefore, a list of all legal assets and an effort to centralize legal work might result in considerable savings. In any event, a study and inventory would cost the Agency little or nothing.

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withdrawal by their own check. Receipts thus become available for new expenditures without dependence on annual Congressional appropriations.

3. In order to bring Covernment corporations under the financial control of Congress and thus provide for annual scrutiny of their operations, the Government Corporation Control Act was enacted in 1945. This Act initiated systematic auditing, accounting and reporting procedures for all Government corporations. In addition, the Act directs that Government corporations can be created only by specific Congressional legislation and may no longer be established by the executive branch under some general Congressional grant of power. General provisions also require that banking or checking accounts normally are to be kept with the Treasurer of the United States or other agents of the United States. This requirement, however, may be waived and does not apply to amounts under a \$50,000 ceiling in any one bank for temporary periods. The Act also requires, in absence of waiver, Secretary of the Treasury approval for purchase or sale by such corporations, of any direct or guaranteed obligations of the United States of amounts in excess of \$100,000. Since 1947 Congressional Appropriation Committees have also limited the annual administrative expenses of Government corporations. According to some authorities, the effectiveness of this limitation is questionable since the Act provides that Congressional action on budget control must not, in any way, restrict the corporation's activities. Also, while the Government corporation is subject to this control, it is not dependent for its existence on annual appropriations due to the authority to use receipts, set up permanent revolving funds or borrow money from the Treasury. While the Act has divested the corporations of some of their autonomy, it does not basically interfere with the scope of their activities or alter the basic freedom of these entities.

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4. This Office has consistently held that the provisions of the Government Corporation Control Act do not apply to Agency proprietaries.

We stated that as far as the activities of our proprietary companies are concerned we find nothing illegal in fiscal procedures that otherwise would be normal for a private corporation generally similar to such business proprietaries. This opinion also stated that income of

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OGC 63-3651

1 3 DEC 1993

MEMORANDUM FOR THE RECORD

SUBJECT: Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 USCA 431

- 1. This memorandum discusses several questions raised by the Act, subject as above (LMRDA). The questions discussed relate to whether LMRDA applies to CIA sponsored labor activities, and what problems of cover and funding are raised thereby. The paper closes with some suggested actions to improve cover.
- 2. Since 1960 the Act has required the filing of extensive reports on behalf of all labor organizations and their officers. Several questions arise in determining whether CIA subsidized organizations are covered by LMRDA. These questions are dealt with as follows.
- 3. Are CIA subsidized unions and affiliates thereof within the legislative jurisdiction of the Act? To the extent that these organizations have connections with or presence in the United States, the answer is yes. Affiliation with an American union or an office in the United States meets these requirements.
- 4. Are the CIA subsidized unions engaged in an industry affecting commerce as required by LMRDA? Yes. Section 3(j) of the Act provides as follows:

A labor organization shall be deemed to be engaged in an industry affecting commerce if it —

- (1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or
- (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

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- (3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
- (4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
- (5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

In addition, Section 3(c) provides that an "industry affecting commerce means any activity. . . in commerce or in which a labor dispute would hinder. . . commerce . . . " "Commerce" is defined as trade, traffic, transportation, transmission or communication among the several states or between any state and any place outside thereof (Section 3(a)). Thus most, if not all, CIA subsidized labor affiliations are covered by the Act either by virtue of Section 3(j) or other language.

5. Are international affiliations of labor unions "labor organizations" within the meaning of the Act? Here the answer is a qualified yes. A labor organization is defined by Section 3(i) as follows:

'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms on conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

The AFL-CIO regards itself as subject to LMRDA. In 1951, the AFL was found to be a labor organization under an act with a very similar definition (NLRB v. Westex Boot, 190 F. 2d. 12).

- 6. Will the United States Government interest exempt CIA subsidized unions from the operation of the Act? This question can only be answered authoritively by the Secretary of Labor. It is suggested that the answer will depend upon the amount of Government control in each case. In any event, the principles of good cover dictate that CIA sponsored unions and affiliations comply with LMRDA.
- 7. What disclosures are required by the Act? These disclosures are set forth in detail by Sections 201, 202, and 203, set forth in attachment A. In addition, Section 205 makes most of the information a matter of public record. The details of these disclosures are set forth in Chapter IV of 29 CFR, in particular part 451. Disclosures are so extensive that the Internal Revenue Service accepts a statement filed under the Act in lieu of disclosures under their own law.
- 8. What are the funding consequences for CIA? The consequences will vary from case to case. But in general, it will be impossible to cover funding by claiming that an international affiliation receives contributions from American labor unions. A check of public records will disclose the union made no donation to the International. It will also disclose the unusual circumstances that the affiliation has not filed a disclosure report. It is therefore necessary to make arrangements with the Department of Labor to allow filing of cover reports under the subject act.

9. Therefore, it is recom	mended that (1) a thorough review of
labor projects be commenced wit	th this Office to determine in what
cases the Act will apply, and wh	at remedies are available or needed
in each individual case; and (2) a	high level approach be made to the
Department of Labor in order to	obtain their cooperation in resolving
the cover problems presented.	

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Office of General Counsel

PL 86-257 \$ 201, 202, 4203 OILO -Attachment

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MEMORANDUM FOR THE RECORD

SUBJECT: Overtime Pay

- l. The Court of Claims decision in the case of Byrnes v. United States (15 November 1962, Case No. 496-59) again focused attention on the question of overtime payments to Federal employees. According to the Court, under the Federal Employees Act of 1945, as amended, Federal employees are entitled to overtime pay or compensatory time off for work in excess of forty hours a week if that time is officially ordered or approved. The Court concluded that formal specific approval for the overtime work performed is not necessary if the performance of the overtime is induced by the Government. The inducement must be more than a "tacit expectation" that the work is to be done.
- The provisions of the Federal Employees Pay Act of 1945, as amended, apply to all Federal employees except those specifically listed in the legislation as exempted. According to Civil Service Regulation 550. 101b(8), the officers of the Central Intelligence Agency are exempted from the provisions of the Civil Service regulations pertaining to overtime. According to an appropriate office of the Civil Service Commission, by implication, this regulatory exemption means that the Civil Service Commission has concluded that CIA does not come under the provisions of the Federal Employees Act of 1945, as amended. According to an opinion of the Office of General Counsel (6 Jan 55), however, the Central Intelligence Agency is subject to the overtime provisions of the Federal Employees Pay Act of 1945, as amended, apparently based on the 1945 Act's application to all Federal employees with Central Intelligence Agency employees not specifically exempted. Obviously it could be argued that officers

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OGC 63-3740

2 3 DEC 1953

MEMORANDUM FOR: Chief, Technical Division, Office of Security

SUBJECT:

Right to Search Government Employee's Desk

- 1. This is in answer to your recent inquiry regarding the authority for the report in the 19 November 1963 Washington Post article of a holding that a person's desk in a Government office is entitled to privacy. The article is on a ruling by General Sessions Judge Harry L. Walker in U.S. v. Madison that evidence obtained by the "bugging" of a telephone booth is inadmissible.
- 2. In support of his ruling, Judge Valker does cite in his opinion a case holding as reported in the Post article. The case is U.S. v. Blok, 188 F. 2d 1019 (1951). There the D.C. police arrested defendant without a warrant on suspicion of a petty larceny and they proceeded to search, without a warrant, a desk assigned to her exclusive use in a Government office where she was employed. She did not voluntarily consent to the search although her official superior did.
- 3. The court quoted McDonald v. U.S., 335 U.S. 453:
 "Where, as here, officers are not responding to an emergency, there must be compelling reasons to justify absence of a search warrant. . . ." Her official superior might reasonably have searched the desk for official property needed for official use. However, in the absence of a valid regulation to the contrary, the defendant was entitled to, and did, keep private property of a personal sort in her desk. Her superiors could not reasonably search the desk for her purse or anything else which did not belong to the Government and had no connection with the work she did in the office.
- 1-1.4. The court, therefore, held that the search of defendant's desk by the police violated her right of privacy under the Fourth Amendment, and that the seized evidence should have been suppressed.

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